



## **LEARNER INVOLVEMENT IN POLICY-MAKING DECISIONS IN SOUTH AFRICAN SCHOOLS**

Submitted in partial fulfilment of the requirements of the Master of Philosophy in  
Human Rights and Democratisation in Africa

by

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23 October 2023

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## DEDICATION

To my loving parents, thank you for rearing this child into the adult that she is today. Without your endless care, guidance and trust in me, I would not have made it this far. Thank you for every warm meal, each comforting hug, all those hours spent waiting in the car for me to finish Moot practice and so much more.

To Sirisha Bhawanideen, thank you for constantly lending me your patient ear, encouraging me and being that someone that I can always count on (to have a good laugh with).

Finally, to all my high school girls: Ashvika Singh, Kalisha Anammalay, Lufuno Tshirangwana, Shereen Francis, and Zahra Jhetam, thank you for the unwavering love and support that you have all shown me over the years.

Specifically, to Zahra and Lufuno, it is difficult to put into words how significant your role has been in shaping my life. All those eye-opening conversations we had as teenagers is what led me to pursue this topic. Thank you for teaching me what it means to think critically and love candidly.

## **ACKNOWLEDGEMENT**

I am immensely grateful for all the efforts of my supervisor Dr Elvis Fokala, who had confidence in me (even when I doubted myself) and consistently guided me with patience and encouragement throughout.

I am also incredibly appreciative that the Centre for Human Rights afforded me the opportunity to be part of the Human Rights and Democratisation in Africa programme. I hope that I am able to put all the valuable insights that I have learned to good use.

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## ACRONYMS AND ABBREVIATIONS

<b>ACRWC</b>	African Charter on the Rights and Welfare of the Child
<b>African Children's Committee</b>	African Committee of Experts on the Rights and Welfare of the Child
<b>BELA Bill</b>	Basic Education Laws Amendment Bill
<b>BHS Code</b>	Benoni High School's Code of Conduct
<b>BHS</b>	Benoni High School
<b>CRC</b>	United Nations Committee on the Rights of the Child
<b>KZN</b>	Kwa-Zulu Natal
<b>LGBTIQ+</b>	Lesbian, Gay, Bisexual, Trans, Intersex, Queer/Questioning +
<b>Maritzburg Code</b>	Maritzburg College's Code of Conduct
<b>RCL</b>	Representative Council of Learners
<b>RFHS</b>	Rob Ferreira High School
<b>RGHS</b>	Rustenburg Girls' High School
<b>SASA</b>	South African Schools Act 84 of 1996
<b>SATT</b>	Social Awareness Task Team
<b>SGBs</b>	School Governing Bodies
<b>The Constitution</b>	The Constitution of the Republic of South Africa, 1996
<b>UN</b>	United Nations
<b>UNCRC</b>	Convention on the Rights of the Child
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural
<b>UNICEF</b>	United Nations International Children's Emergency Fund

## CHAPTER 1 INTRODUCTION

### 1.1. Background

It is well-known that human rights are interdependent, and this is especially true for children's right to participation and their right to education.<sup>1</sup> Children's right to participate is fundamental and is a general principle which enables the meaningful interpretation of all other children's rights.<sup>2</sup> Children's right to education is a cornerstone right, necessary for the achievement of all other rights.<sup>3</sup> Consequently, children's right to participate is crucial within education settings.<sup>4</sup>

Education consists of systems, institutions, content and products.<sup>5</sup> The intersection and co-dependence of these rights requires that children are able to participate in the systems and institutions of education, including the management and decision-making processes of schools.<sup>6</sup> In other words, learners should be involved in school governance.<sup>7</sup> School governance concerns the running and management of the school's functions in terms of school rules, procedures and decision-making as all the interaction of school personnel.<sup>8</sup> Notably, school governance does not refer solely to mere management.<sup>9</sup> Rather, it is more holistically concerned with the 'design, implementation and supervision of all school-based policies and guidelines.'<sup>10</sup>

In South Africa, the South African Schools Act 84 of 1996 (SASA) vests governance of public schools in School Governing Bodies (SGBs).<sup>11</sup> Regarding child participation in policy-making decisions, SASA then mandates that learners be represented on the SGBs of public secondary schools.<sup>12</sup> Across the country, this is a non-negotiable government policy position because, the State as a party to global (United Nations) and regional (African Union) treaties

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<sup>1</sup> United Nations Committee on the Rights of the Child 'General Comment 12' (2009) CRC/C/GC/12 para 68.

<sup>2</sup> CRC General Comment 12 (n 1) para 2.

<sup>3</sup> F Veriava & K Paterson 'The right to education' in J Dugard *et al* (eds) *Research Handbook on Economic Social and Cultural Rights as Human Rights* (2020) 113-114.

<sup>4</sup> CRC General Comment 12 (n 1) paras 105-114.

<sup>5</sup> M Kelly *The origins of education in Zambia* (1999) 1.

<sup>6</sup> CRC General Comment 12 (n 1) paras 105-114.

<sup>7</sup> As above.

<sup>8</sup> E Cheng *et al* 'A model for promoting student participation in school governance' (2020) 34 *International Journal of Educational Management* 738.

<sup>9</sup> N Davids 'Governance in South African schools: Democratic advancement or hindrance?' (2020) *Educational Management Administration & Leadership* 3.

<sup>10</sup> As above.

<sup>11</sup> Sec 16 South African Schools Act 84 of 1996.

<sup>12</sup> Sec 23(2) SASA (n 11).

which require children's involvement in all matters that concern them, sees children's involvement in school governance as a cardinal tool that supports its commitment to the treaties ratified.<sup>13</sup>

## 1.2. Problem Statement

A child's right to participate has encouraged schools to allow children 'to join decision making and to share responsibilities for activities in school.'<sup>14</sup> In keeping with this SASA requires representation of learners on SGBs.<sup>15</sup> However, the concern is that mere representation does not mean true participation. According to Fokala and Rudman, it is the meaningful engagement (or lack thereof), in for example, school governance, which constitutes the enjoyment or abjuration of the right to participation in school settings.<sup>16</sup>

A barrier to meaningful participation is the pervasive perception that children generally lack the capacity to make well-reasoned decisions.<sup>17</sup> Adults are more likely to see children as needing protection rather than an 'active subject of human rights, with an own personality, integrity and ability to participate freely in society.'<sup>18</sup> These archaic views offend children's right to participate in their education as it is used to justify children being sidelined in school governance.<sup>19</sup> Despite the relevance of this issue, not much is known about how South Africa's legal framework tackles this problem.

Children's right to participate in education must also be viewed within the South African context. The country's history of apartheid has left many enduring scars, including that learners continue to be marginalised on the basis of race, gender, sexual orientation, disability, class and so on.<sup>20</sup> This inequality hinders participation further as children of marginalised groups tend to experience exclusion in school governance more acutely.<sup>21</sup> Regrettably,

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<sup>13</sup> Art 12 Convention on the Rights of the Child (UNCRC); Art 4(2) African Charter on the Rights and Welfare of the Child (ACRWC).

<sup>14</sup> L Krappmann 'The weight of the child's view (Article 12 of the Convention on the Rights of the Child)' (2010) 18 *International Journal of Children's Rights* 505.

<sup>15</sup> Sec 23(2) SASA (n 11).

<sup>16</sup> E Fokala and A Rudman 'Age or maturity? African children's right to participate in medical decision-making processes' (2020) 20 *African Human Rights Law Journal* 669.

<sup>17</sup> F Hunt 'Learner councils in South African schools: adult involvement and learners' rights' (2014) 9(3) *Journal of Education, Citizenship and Social Justice* 5.

<sup>18</sup> M Reyneke 'Children's right to participate: Implications for school discipline' (2013) 46(1) *De Jure Law Journal* 206.

<sup>19</sup> M Nthontho 'Children as stakeholders in education: Does their voice matter?' (2017) 7(1) *South African Journal of Childhood Education* 6.

<sup>20</sup> Hunt (n 17) 3.

<sup>21</sup> CRC General Comment 12 (n 1) para 4; Nthontho (n 19) 1.

exclusion occurs despite non-discrimination being a central tenant within children's right to participate.<sup>22</sup>

The absence of marginalised children's inputs results in the creation of school codes, rules and policies which ignore their specific interests and are often littered with discriminatory practices concerning race, gender and religion among other issues.<sup>23</sup> However, children's participation is a potential cure for this ill, as their input could play a major role in curbing authoritarianism and discrimination in school governance.<sup>24</sup> For this reason, it is important to explore how South Africa's legal framework ensures that all children are able to participate in school governance and enables them to be regarded as equal stakeholders and 'active agents in the creation of their changing conceptions of school governance and participation.'<sup>25</sup>

### **1.3. Research Objectives**

This mini-dissertation aims to achieve the following:

- to explore the theoretical framework on child participation in policy-making decisions as part of school governance;
- to measure whether South Africa's laws are satisfying the international children's rights standard;
- to analyse whether government and school policies are allowing for genuine child participation and non-discrimination;
- and to provide recommendations to fill potential gaps in the national legal framework.

### **1.4. Research questions**

The main research question of this study is: To what extent are learners involved in policy-making decisions in South African schools?

The sub-questions are:

1.4.1. What does the theoretical framework on child participation entail regarding policy-making decisions as part of school governance?

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<sup>22</sup> CRC General Comment 12 (n 1) para 68.

<sup>23</sup> Davids (n 9) 10-11.

<sup>24</sup> CRC General Comment 12 (n 1) para 109.

<sup>25</sup> S Lewis & J Naidoo 'Whose Theory of Participation? School Governance Policy and Practice in South Africa' (2004) 6(2) *Current Issues in Comparative Education* 101.

1.4.2. Whether South Africa's current legal framework satisfies obligations under children's right to participation in school policy-making?

1.4.3. Whether government and school policies have adequate positions on democratic learner participation, non-discrimination and inclusion?

## **1.5. Literature Review**

While the current children's rights framework mandates child participation, there is a paucity of information as to how child participation can practically be achieved, especially in a school setting beyond children's involvement in a classroom. Specifically, an investigation as to how child participation must be carried out regarding school governance and policy-making decisions is necessary. There is also an absence of literature on whether South Africa's laws on learner participation in school governance satisfies the State's children's rights obligations. Finally, more must be done to unveil what the current practices regarding learner participation and the prevention of discrimination are like in government and school policies. Thus, a thematic review of the relevant literature is canvassed in order to better expose these gaps.

### **1.5.1. Exploring the theoretical framework on child participation in policy-making decisions as part of school governance.**

Being bound by the UNCRC and the ACRWC, South Africa is obligated to realise the relevant children's rights such as the right to participation, education, freedom of expression and non-discrimination, which are all interlinked.<sup>26</sup> These rights are further entrenched in the Bill of Rights of the 1996 Constitution of the Republic of South Africa (the Constitution).<sup>27</sup>

The United Nations Committee on the Rights of the Child (CRC) has laid out General Comment 12 on the right to be heard.<sup>28</sup> The CRC describes participation as more than just consultation, rather it is a continuous process where information is shared, mutually respectful dialogue occurs between adults and children, and children are informed about the way their views have shaped a particular outcome of a matter concerning them.<sup>29</sup>

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<sup>26</sup> Arts 28, 12, 13, & 2 UNCRC ratified 16 June 1995; Arts 11, 7, 4(2) & 3 ACRWC ratified 7 January 2000; CRC General Comment 12 (n 1) para 68.

<sup>27</sup> Secs 29, 16 & 9 Constitution of the Republic of South Africa, 1996.

<sup>28</sup> CRC General Comment 12 (n 1) para 2.

<sup>29</sup> CRC General Comment 12 (n 1) para 3.

The CRC further advises that in order to carry out the right to participate, children must be well informed on the matter and must be made aware of the consequences of their choices.<sup>30</sup> So long as a child can form and express an opinion, that expression must always be attended to.<sup>31</sup> However, how much weight their view is given is dependent on their capacity which is assessed on a case-by-case basis.<sup>32</sup> Children must be given feedback as to how their view has affected the situation, and must also have a course of complaint, remedy and redress should they feel dissatisfied.<sup>33</sup>

Notably, the realisation of the right to education entails cognitive development, but also requires that education fosters active citizenship and equality.<sup>34</sup> In light of this, the CRC recommends that participation must occur in education settings, and that legislation must mandate learner representation on school boards so that they can take part in the 'development and implementation of school policies and codes of behaviour'.<sup>35</sup> Despite the clear obligation to allow children to participate, there is still hesitancy to involve learners in matters of school governance.<sup>36</sup> The CRC has been concerned about the 'authoritarianism, discrimination, disrespect and violence' which is still pervasive in schools as it inhibits the expression of children's opinions.<sup>37</sup>

While it can be appreciated that the CRC does at least provide some definition of participation, it is still left wanting. Moreover, there is no elaboration on how to go about child participation practically. More can be done to establish guidance on how to avoid tokenism and foster effective and meaningful participation. Further, there is a paucity of information around what child participation in school governance should specifically entail.

At the regional level, the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) has set out Guidelines on Child Participation.<sup>38</sup> The guidelines are grounded in article 4(2) of the ACRWC which enshrines the right to be heard in all judicial and administrative proceedings affecting a child, and article 7 concerning freedom of expression, among others.<sup>39</sup> The African Children's Committee further utilises the best interest

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<sup>30</sup> CRC General Comment 12 (n 1) para 41; E Fokala 'Calibrating Children's Rights to Participate in a Family Setting 30 Years after the Adoption of the Convention on the Rights of the Child and the African Children's Charter' (2020) 34(2) *Speculum Juris* 190.

<sup>31</sup> Reyneke (n 18) 210.

<sup>32</sup> CRC General Comment 12 (n 1) paras 42-44.

<sup>33</sup> CRC General Comment 12 (n 1) paras 45-47.

<sup>34</sup> UNESCO and UNICEF 'A Human Rights-Based Approach to Education for All' (2007) 32.

<sup>35</sup> CRC General Comment 12 (n 1) para 110.

<sup>36</sup> Hunt (n 17) 5.

<sup>37</sup> CRC General Comment 12 (n 1) para 104.

<sup>38</sup> African Committee of Experts on the Rights and Welfare of the Child 'Guidelines on Child Participation' (2022).

<sup>39</sup> African Children's Committee Guidelines on Child Participation (n 38) 6.

of the child and non-discrimination as principles in the implementation of the right to participate.<sup>40</sup> However, the only guidance on implementation is that depending on the child's capacity their views must be taken seriously and be followed by reasonable actions.<sup>41</sup> While it is accepted that using the best interest of the child and non-discrimination as principles to ground participation is necessary, there is no indication as to what using these principles would entail practically. Thus, further analysis must be conducted in this regard.

Domestically, child participation is a general principle of the Children's Act which mandates that children's views must be given due consideration in all 'decisions by any organ of state in any matter concerning a child or children in general.'<sup>42</sup> SASA then upholds this, by mandating learner representation on SGBs.<sup>43</sup> However, the inclusion of learners was also due to the shift toward a democratic era.<sup>44</sup> South Africa's chequered apartheid history deeply affected the state's education system.<sup>45</sup> During apartheid schools were segregated by race, with the white minority receiving superior quality education.<sup>46</sup> The system was also highly authoritarian and centralised.<sup>47</sup> Students were socialised to be 'subservient and accepting.'<sup>48</sup> However, some student representative councils were politically active.<sup>49</sup> These were usually unofficial leadership bodies established by learners of colour who fought against the apartheid government and demanded a say in their education.<sup>50</sup> Moreover, the significance of learner activism was demonstrated by the bloodshed of the 1976 Soweto uprising where students fought against Afrikaans as a medium of instruction.<sup>51</sup>

With students earning their place in the liberation struggle, the dawn of the democratic Constitutional era had to acknowledge learners' involvement in decisions that affect them.<sup>52</sup> The legislature had accordingly promulgated SASA to give effect to the Constitution regarding the rights of the child as well as to imbue the education system with democratic values.<sup>53</sup>

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<sup>40</sup> African Children's Committee Guidelines on Child Participation (n 38) 7.

<sup>41</sup> African Children's Committee Guidelines on Child Participation (n 38) 15-20.

<sup>42</sup> Secs 10 and 6(b) Children's Act 38 of 2005; Hunt (n 17) 4.

<sup>43</sup> Sec 23(2) SASA (n 11).

<sup>44</sup> E Phaswana 'Learner councillors' perspectives on learner participation' (2010) 30 *South African Journal of Education* 106.

<sup>45</sup> Hunt (n 17) 3.

<sup>46</sup> N Mabovula 'Giving voice to the voiceless through deliberative democratic school governance' (2009) 29 *South African Journal of Education* 219.

<sup>47</sup> Mabovula (n 46) 219.

<sup>48</sup> Hunt (n 17) 15.

<sup>49</sup> As above.

<sup>50</sup> Hunt (n 17) 3.

<sup>51</sup> V Mncube 'Democratisation of schooling in South Africa: issues of social justice and the voice of learners?' (2008) 28 *South African Journal of Education* 78; Davids (n 9) 4.

<sup>52</sup> Phaswana (n 44) 106.

<sup>53</sup> Mabovula (n 46) 219.

Consequently, specifically for ordinary public secondary schools, SASA mandates that SGBs must be composed of the 'principal, teachers, non-teaching staff, parents and learners.'<sup>54</sup> SASA does not provide for learner representation in primary schools as it only mandates representation for learners in grade 8 or higher.<sup>55</sup> Further, 'public' excludes independent schools and 'ordinary' excludes public schools for learners with special needs.<sup>56</sup>

SASA attempted to dismantle the previous system by decentralising school governance and putting more power into local communities.<sup>57</sup> SGBs were made responsible for making policies regarding admissions, languages, religion, and discipline, drafting a constitution and code of conduct, recommending staff appointments and managing finances including setting of school fees.<sup>58</sup> Further, SASA commits to a 'democratic transformation'.<sup>59</sup> Having learners genuinely participate means that their interests are represented and that they are included in SGB decision-making through constructive and respectful dialogue.<sup>60</sup> Thus, by allowing learners to genuinely participate in policy-making decisions, school governance becomes more democratic as this gives life to democratic principles such as inclusion, equality, transparency, fairness and justice.<sup>61</sup>

Ultimately, while it can be said that democratic school governance does assist with realising children's participation rights, there needs to be a better understanding of what democratic school governance practically entails. Moreover, further analysis must be pursued regarding how exactly democratic school governance enables child participation. Further, principles such as the best interest of the child and non-discrimination are useful guiding tools, but more can be done to tease out the specific impact of these principles on children's right to participate in policy-making.

### **1.5.2. Whether South Africa's current legal framework satisfies obligations under children's right to participation in school policy-making.**

SASA vests school governance in SGBs, thus making SGBs responsible for school policy decision-making.<sup>62</sup> While it is true that SASA allows for learners to be on SGBs as means of promoting democratisation of governance, the manner in which their participation is carried

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<sup>54</sup> Sec 23(2) SASA (n 11).

<sup>55</sup> As above.

<sup>56</sup> Sec 12 SASA (n 11).

<sup>57</sup> Lewis & Naidoo (n 25) 100.

<sup>58</sup> Davids (n 9) 4.

<sup>59</sup> Preamble SASA (n 11).

<sup>60</sup> Mabovula (n 46) 223.

<sup>61</sup> Mabovula (n 46) 219; Lewis & Naidoo (n 25) 102.

<sup>62</sup> Sec 16 SASA (n 11).



out in practice may hinder the realisation of this right.<sup>63</sup> One of the major downfalls of SASA is that merely mandating representation does not go far enough to confront an obvious tension: on one hand learners must be protected but on the other they ought to participate.<sup>64</sup> This tension should not exist in the first place as allowing children to participate does not necessarily mean that they would be left unprotected. However, the predominant view of adult governors is that children cannot be trusted with decision-making as they are inexperienced and ‘incapable of making reasoned and informed decisions.’<sup>65</sup> For this reason, adult governors believe that children should not bear the hefty responsibility of making burdensome decisions when they do not have the capacity to do so.<sup>66</sup>

The view that children are homogeneously incompetent and inexperienced is flawed.<sup>67</sup> Rather, how much weight is given to their opinions is dependent on their capacity which must be assessed on a case-by-case basis, but this assessment is rarely made.<sup>68</sup> Instead, learner governors are generally not taken seriously as equals on the board and their views are dismissed leaving them feeling like ‘guests’ as opposed to valued members.<sup>69</sup> On the opposite end of the spectrum, learners have also been viewed as radical troublemakers who threaten adult authority.<sup>70</sup> In reality, regardless of adult perceptions on child capacities, children’s views must always be heeded.<sup>71</sup> Despite this, there is not much analysis on whether the current domestic legal framework engages with potential nuances and complexities of children’s capacities.

Though SASA seems to value democratic governance, there is a lack of research as to whether the Act truly upholds this. Adult governors do not seem to value learner participation or democratic values in decision-making.<sup>72</sup> Their approach tends to be technocratic and apolitical.<sup>73</sup> Thus, adult governors only tolerate learners as members of SGBs in order to comply with SASA requirements.<sup>74</sup> Essentially, even if learners are present and express their opinions, they do not have the power to ensure that ‘their views will be heeded by the

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63 Lewis & Naidoo (n 25) 101-102.

64 Phaswana (n 44) 106.

65 Hunt (n 17) 5.

66 Reyneke (n 18) 219.

67 Reyneke (n 18) 210.

68 As above.

69 Phaswana (n 44) 106-107; C Shay and K Yu ‘Tokenism and barriers to genuine learner participation in school governance in one progressive South African girls’ high school’ (2022) 42(4) *South African Journal of Education* 3.

70 Hunt (n 17) 16.

71 Hunt (n 17) 5.

72 Lewis & Naidoo (n 25) 103.

73 As above

74 As above

powerful.<sup>75</sup> This often results in consultation fatigue with learners no longer wanting to be involved because they rightly feel as if they can never influence decisions.<sup>76</sup> With SASA allowing for this prevalence of tokenism (which is basically non-participation), Reyneke is of the opinion that the Act is unlikely to pass constitutional muster if challenged.<sup>77</sup>

Another gap is that the exact delineation of student's roles on SGBs is left wanting. Learner representatives on SGBs are often from the Representative Council of Learners (RCL), yet ambiguously, only 'in appropriate cases' are RCL allowed to 'provide learners with an opportunity to participate in decision making regarding the school.'<sup>78</sup> Moreover, adult governors see learner governors' role to be to merely communicate decisions taken by the SGB to other students.<sup>79</sup> In fact, in most instances learners are not even invited to meetings and are informed of decisions after the fact.<sup>80</sup> This is a symptom of a greater issue. That being, that there is a fundamental lack of trust that underlies the relationship between adult and child governors.<sup>81</sup>

Although non-discrimination is key to child participation and democratic governance, there is little analysis as to whether SASA and other laws on school governance achieve this.<sup>82</sup> The importance of non-discrimination in participation is highlighted by the fact that 'children belonging to marginalized and disadvantaged groups, face particular barriers' concerning the right to participate.<sup>83</sup> States must ensure that children, regardless of their gender, race, sexual orientation, amongst others, must be afforded equal opportunity to partake in decisions which affect them.<sup>84</sup>

Part of this obligation also means that the State must create a safe and enabling environment for children to participate.<sup>85</sup> Even when learners are members of the SGB, gender dynamics limit authentic participation. It has been shown that girls tend to be quieter and cede any authority to boys in decision-making.<sup>86</sup> Socio-economic class is also a problem as students who struggle to pay fees may feel uncomfortable speaking about school fees determinations.<sup>87</sup>

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<sup>75</sup> Lewis & Naidoo (n 25) 106

<sup>76</sup> Reyneke (n 18) 234.

<sup>77</sup> Reyneke (n 18) 216.

<sup>78</sup> Mabovula (n 46) 220.

<sup>79</sup> Phaswana (n 44) 106.

<sup>80</sup> As above

<sup>81</sup> Phaswana (n 44) 106; Mabovula (n 46) 227.

<sup>82</sup> CRC General Comment 12 (n 1) para 4; Nthontho (n 19) 1.

<sup>83</sup> As above.

<sup>84</sup> African Children's Committee Guidelines on Child Participation (n 38) 12.

<sup>85</sup> As above.

<sup>86</sup> Shay & Yu (n 69) 4.

<sup>87</sup> As above.

Significantly, there is a paucity of analysis on how provincial legislation regulates learner participation in school governance. In light of this, research must now turn to critically investigating national and provincial legislation in order to uncover whether there are sufficient provision ensuring learner participation and safeguards against discrimination to ensure diverse representation and genuine participation within SGBs.

### **1.5.3. Whether government and school policies have adequate positions on democratic learner participation, non-discrimination and inclusion.**

Even though decentralising power through SGBs was intended to dismantle discriminatory apartheid structures and build a more inclusive schooling environment, SGBs themselves tend to 'exacerbate inequalities of power relations, race, gender and socio-economic class.'<sup>88</sup> This happens when marginalised learners' inputs and interests are sidelined in the creation of policies and resultantly those policies entrench discriminatory practices. Learners feel as though very little can be done about this discrimination as their schools tend to be dominated by authoritarianism where codes of conduct and rules are usually designed without learners and are taught to be non-negotiable.<sup>89</sup>

However, democratic school governance could potentially be used as a tool for disruption as learners from different backgrounds are able to participate and prevent the making of discriminatory school policies.<sup>90</sup> Learners have blatantly been denied the ability to speak their home languages during break-time and have endured rules against afros and braids under the Anglo-normative construction of 'neat hair.'<sup>91</sup> However, should students have been able to participate in the drafting of these rules, adult governors would be obligated to take their views and preferences into consideration and at least negotiate solutions. Dress codes and codes of conduct are not the only issues. There is much jurisprudence on admission, language, and financial policies that are littered with discriminatory practices.<sup>92</sup>

Further analysis is needed on government policies and guidelines relating to discrimination in school governance. Moreover, looking at a selection of school policies can further unveil whether legislation and government policies are actually curbing discriminatory policy-making by SGBs.

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<sup>88</sup> Phaswana (n 44) 107.

<sup>89</sup> Reyneke (n 18) 218-220.

<sup>90</sup> Davids (n 9) 10.

<sup>91</sup> Davids (n 9) 11.

<sup>92</sup> Z Sujee (Section 27) 'School Governance' in *Basic Education Rights Handbook* (2021) 90.

## 1.6. Methodology and approach

The study primarily uses a doctrinal methodology, which investigates the legal framework around learner participation in school policy-making through desk-based research.<sup>93</sup> This garners a qualitative analysis of the current normative landscape's position on learner participation in school governance. The CRC, ACRWC, the Constitution, SASA and the Children's Act are the main sources. Further, case law as well as provincial legislation and Ministerial regulations around school policies are also analysed. Books, journal articles, frameworks by the United Nations (UN) and human rights organisations, and the internet are utilised as secondary sources.

The third chapter entails more of a socio-legal approach as the laws' effect on some school policies are observed.<sup>94</sup> While not comprehensive, this gives room for brief analysis as to how the law translates on the ground.

Finally, the study is underpinned by a child's rights-based approach which ensures that this research secures the better fulfilment of children's rights and works 'towards strengthening the capacities' of rights holders and duty bearers when unpacking the theory, laws and school policies concerning learner participation and when proffering recommendations to close possible gaps.<sup>95</sup> Further, this approach grounds the analysis to centre around the identification of rights holders (learners) and their entitlements as well as duty bearers (the State and subsequently public schools) and their obligations.<sup>96</sup>

## 1.7. Limitations of the study

There are three major limits to this mini-dissertation:

First, there are limitations as to the types of schools studied. The scope of this research is limited to public schools as SASA does not regulate the SGBs of independent schools.<sup>97</sup> Further, the analysis only looks to secondary schools as SASA only provides for learner representation for students in grade 8 or higher.<sup>98</sup> Last, the study is limited to 'ordinary' public schools and not those that specifically cater for learners with special needs as SASA has

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<sup>93</sup> A Budianto 'Legal Research Methodology Reposition in Research on Social Science' (2020) 9 *International Journal of Criminology and Sociology* 1340-1341.

<sup>94</sup> As above.

<sup>95</sup> L McConnell & R Smith *Research Methods in Human Rights* (2018) 3.

<sup>96</sup> As above.

<sup>97</sup> Secs 16 & 45-51 SASA (n 11).

<sup>98</sup> Sec 23(2) SASA (n 11).

different provisions on these schools and provincial legislation does not seem to address governance of these schools comprehensively.<sup>99</sup>

Second, there are limits as to the provinces chosen for analysis of provincial legislation. The provinces of Gauteng, Kwa-Zulu Natal, and Western Cape were selected as these three provinces house the largest populations allowing for a larger sample space that would be more representative of South Africa's demographic.<sup>100</sup> Further, even though Limpopo and Free State have larger populations,<sup>101</sup> Mpumalanga was chosen as it recently promulgated legislation that detailed notable provisions regarding diverse learner representation on SGBs.<sup>102</sup>

Third, the school policies chosen for case studies are limited. One ordinary public secondary school is chosen from each of the four provinces: Benoni High School from Gauteng; Maritzburg College from Kwa-Zulu Natal; Rob Ferreira High School from Mpumalanga; and Rustenburg Girls' High from Western Cape.

Benoni High School, a former model C school, was selected as the author was the RCL representative on the school's SGB in 2018. The insights from this experience lends itself well to this research as the author has a better understanding of this school's internal processes regarding learner participation in policy-making decisions. In light of this choice, the common denominator for the choice of the other three schools is that they are also former model C schools. Further, the choice of these schools was based on the availability of information on the schools' policies through desk-based research. The case studies are in no way a comprehensive picture as to what all South African schools practice. Moreover, this research is further constrained due to challenges around the timeous granting of ethical clearance for interviews.

## **1.8. Structure and Outline**

Chapter 1 contextualises motivation for the issue explains where research can assist to proffer possible solutions.

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<sup>99</sup> Sec 12(2) SASA (n 11).

<sup>100</sup> Statistics South Africa 'Statistical Release: Census 2022' (2023) 3.

<sup>101</sup> As above.

<sup>102</sup> Sec 6 'Regulations for the Election of School Governing Bodies of Public Schools' Mpumalanga Provincial Notice 1 of 2021.

Chapter 2 will explore what the theoretical framework on child participation entails regarding policy-making decisions as part of school governance.

Chapter 3 investigates whether South Africa's current legal framework satisfies obligations under children's right to participation in school policy-making.

Chapter 4 analyses whether government and school policies have adequate positions on democratic learner participation, non-discrimination and inclusion.

Finally, chapter 5 concludes the study and provides recommendations.

## CHAPTER 2

### THE THEORETICAL FRAMEWORK ON CHILD PARTICIPATION IN POLICY-MAKING DECISIONS AS PART OF SCHOOL GOVERNANCE

#### 2.1. Introduction

This chapter aims to explore the theoretical framework of learner participation in democratic school governance and subsequently policy decision-making in the South African context. This is done so that the complexities of child participation can be unpacked, setting the background for analysis of South Africa's legislation and school policies to be measured against.

Children's right to participate is grounded by democratic values, non-discrimination and the best interest of the child.<sup>103</sup> Therefore, as a point of departure, the specifics of how these principles interact with participation must be established. This then allows for the practicalities of child participation to be detailed through analysing different models of child participation. Finally, this theory lays the foundation to combat common arguments against child participation.

#### 2.2. Democratic school governance allowing for learner participation

One part of dismantling the system of apartheid in 1994, meant reform of all institutions including education.<sup>104</sup> Decentralisation of school governance was a response to the new democratic call for 'community' and 'grassroots' control.<sup>105</sup> The move to put power in the hands of those who were directly affected by schools' decisions was part of South Africa's commitment to a constitutional democracy.<sup>106</sup> This is in line with global good governance and modern policy-making which values stakeholder engagement, in this case, children are central stakeholders who are most deeply affected by how their schools are governed.<sup>107</sup>

Democracy and human rights go hand in hand as evidenced by the CRC promoting democratic schools where children are active participants.<sup>108</sup> Democratic schools should gear

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<sup>103</sup> African Children's Committee Guidelines on Child Participation (n 38) 7.

<sup>104</sup> Y Sayed (UNESCO) 'Education decentralisation in South Africa: Equity and participation in the governance of schools' (2009) *Background paper prepared for the Education for All Global Monitoring Report* 1-2.

<sup>105</sup> Sayed (n 104) 7-8.

<sup>106</sup> As above

<sup>107</sup> Inter-Agency Working Group on Children's Participation 'Children's participation in decision making: Why do it, When to do it, How to do it' (2007) 5; B Byrne & L Lundy 'Children's Rights and Policy-Making: a 6 P framework' (2019) *The International Journal of Human Rights* 12.

<sup>108</sup> T Hammarberg (UNICEF) 'A school for children with rights' (1998) 14 and 18.

children for ‘a responsible life in a free society’ where values of peace, tolerance, equality and respect for human rights are fostered and uphold children’s dignity by ensuring they live a full and decent life where they are actively participating in society and enjoying social integration and maximum individual development.<sup>109</sup> To achieve this, democratic schools must demonstrate the link between the democratic values in textbooks and the daily lives of children by allowing them to have power over administrative aspects of schooling including governance.<sup>110</sup> In fact, democratic values and behaviours are best taught and adopted through experiential and social learning.<sup>111</sup> Students do not automatically become participatory citizens who care for democracy when they become adults, rather this ought to be cultivated practically in schools through learner participation in school governance.<sup>112</sup>

Further, democratic participation develops children’s ability to confront various matters in their adult lives.<sup>113</sup> Children are encouraged to be active citizens capable of articulating their views coherently and able to ‘discuss matters of the state and criticise the way state power is organised.’<sup>114</sup> Since democratic discussions require that different views are not to be ignored, students must learn how to engage in respectful conversations and listen actively.<sup>115</sup> They must demonstrate patience and tolerance for differing views and conjure innovative solutions.<sup>116</sup>

Learners also gain a sense of responsibility and accountability by learning to justify their views based on substantive values and being prepared for their decisions to be critiqued.<sup>117</sup> Democratic deliberations furthers skills for collaboration and develops mutual trust-based relationships between adult governors and child governors.<sup>118</sup> Further, leadership, communication and conflict-management skills are enhanced.<sup>119</sup>

Lansdown notes Highfield School, a junior school for children of the ages 7 to 11 in the United Kingdom, as an example of a democratic school.<sup>120</sup> When the school was challenged with violence and bullying, having children involved in finding solutions resulted in a ‘bullying box’ for complaints, ‘guardian angels’ which were children who offered to support other children

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<sup>109</sup> Hammarberg (n 108) 14 and 18.

<sup>110</sup> Hammarberg (n 108) 22-23.

<sup>111</sup> Phaswana (n 44) 120; Shay & Yu (n 69) 1.

<sup>112</sup> Cheng (n 8) 739.

<sup>113</sup> G Lansdown (UNICEF) ‘Promoting Children’s Participation in Democratic Decision-Making’ (2001) 4.

<sup>114</sup> Mabovula (n 46) 222.

<sup>115</sup> Cheng (n 8) 739.

<sup>116</sup> Mabovula (n 46) 223.

<sup>117</sup> S Msweli ‘The Role of Representative Council of Learners in Decision Making Processes in the South African Secondary Schools’ (2021) 9(9) *International Journal of Education and Research* 60-61.

<sup>118</sup> Hunt (n 17) 2.

<sup>119</sup> Mabovula (n 46) 231.

<sup>120</sup> Highfield School <https://www.highfield.herts.sch.uk/> (accessed 20 October 2023); Lansdown (n 113) 25-26.



that were ostracised or bullied, and child mediators to resolve playground conflicts.<sup>121</sup> This is but one example that shows that children can take ownership of school matters and become capable and responsible problem solvers when given the opportunity to do so. Although the main focus of this study is secondary schools in South Africa, this example illustrates that even young children are able to participate in and benefit from democratic schooling.

Moreover, in many countries, including South Africa, children are unable to vote in the political systems that govern their lives, thus they have an 'even stronger claim' to participate, especially in school governance since the school environment is a significant part of their lives.<sup>122</sup> Consequently, beyond the many benefits that it yields for children, the main reason as to why democratic school governance should be employed is because it demands that learners' views must be taken seriously.<sup>123</sup> Additionally, democracy is a safeguard against domination by a central power, thus when children participate in governance it fosters citizenship, teaching children of the political element of participation 'that speaks of power, and challenge, and change.'<sup>124</sup> Therefore, democratic school governance enables and enhances the quality of children's right to participation.

### **2.3. Non-discrimination as a core principle of learner participation**

Turning to the principle of non-discrimination, although democratic values were generally imbued in the education system through SASA, school governance specifically needed to be guided by principles of inclusion and non-discrimination in order to be truly democratic.<sup>125</sup> A children's rights approach to democratic school governance means that children's participation must account for non-discrimination.<sup>126</sup> Children are not a homogenous group, rather all children have intersecting identities that affect their equitable participation.<sup>127</sup>

Gender, race, age, disability, sexual orientation, socio-economic status, amongst others, are parts of children's identities that reflect overlapping inequalities, privileges and vulnerabilities which affect their ability to genuinely participate.<sup>128</sup> In Brazil, much like South Africa, there are

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<sup>121</sup> As above.

<sup>122</sup> Lansdown (n 113) 6-7.

<sup>123</sup> Lansdown (n 113) 4; I Carr & C Williams 'The mediation of Representative Council of Learners policy in Western Cape schools - 1997 to 2003' (2009) 29 *South African Journal of Education* 80.

<sup>124</sup> A Nylund 'Children's Right to Participate in Decision-Making in Norway: Paternalism and Autonomy' in T Haugli *et al* (eds) *Children's Constitutional Rights in the Nordic Countries* (2019) 205; N Thomas 'Towards a Theory of Children's Participation' (2007) 15 *International Journal of Children's Rights* 206.

<sup>125</sup> Mabovula (n 46) 224.

<sup>126</sup> African Children's Committee Guidelines on Child Participation (n 38) 7.

<sup>127</sup> Lansdown (n 113) 12; P Cuevas-Parra 'Multi-dimensional lens to article 12 of the UNCRC: a model to enhance children's participation' (2023) 21(3) *Children's Geographies* 363.

<sup>128</sup> C O'Kane (UNICEF) 'Guidelines on Adolescent Participation and Civic Engagement' (2020) 8.

a significant number of poor children who face discrimination due to their race, gender, socio-economic status and sexual orientation.<sup>129</sup> A study on child participation revealed that (unsurprisingly) schools are a microcosm for greater society, with girls of African descent, who also identified as part of the LGBTIQ+ community, facing the most discrimination which hindered their participation in decision-making.<sup>130</sup> Although child identities regrettably affect their participation, if the process is carried out with the intention of ensuring true participation, then equity and inclusion can be achieved by supporting vulnerable and marginalised children through identifying, assessing and addressing barriers to inclusion, sharing diversity-friendly information, and creating inclusive and separate spaces for specific groups of children.<sup>131</sup>

Significantly, a diversity of learners in school governance is necessary as specific children are best-fit to represent their group's interests, sometimes even acting as human rights defenders and activists.<sup>132</sup> McMillan and Tisdale speak of the importance of acknowledging children as important social contributors, once again using Brazil as an example, children have acted as 'political revolutionaries who have created and led social movements.'<sup>133</sup> Because these children had a better grip and understanding of their own realities and contexts than adults advocating on their behalf, they chose their own means of communication such as hip-hop music and online networks.<sup>134</sup> This may not have been an option for adults, but it proved to be effective.

In light of this, having children participate in policy-making can ensure that the policies produced are better benchmarked against child right's standards.<sup>135</sup> Further, having a diversity of learners can assist with more authentically conducting policy impact assessments around issues such as gender, race, sexual orientation, amongst others.<sup>136</sup>

#### **2.4. The best interests of the child as a core principle of learner participation**

Often, adults fear that children participating in decision-making is not in their best interest because adults prematurely assume that children lack the competence to make well-reasoned decisions and think that children cannot accept the consequences of their actions.<sup>137</sup> Thus, under the guise of protection, children are sometimes left out of important matters that affect

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<sup>129</sup> Cuevas-Parra (n 127) 363.

<sup>130</sup> Cuevas-Parra (n 127) 367-368.

<sup>131</sup> O'Kane (n 128) 53-54.

<sup>132</sup> C McMellon & E Tisdall 'Children and Young People's Participation Rights: Looking Backwards and Moving Forwards' (2020) 28 *International Journal of Children's Rights* 172-173.

<sup>133</sup> McMellon & Tisdall (n 132) 170.

<sup>134</sup> As above.

<sup>135</sup> G Lansdown (UNICEF) 'Children's Rights in Education: Applying A Rights-Based Approach to Education' (2010) 9.

<sup>136</sup> Byrne & Lundy (n 107) 8.

<sup>137</sup> McMellon & Tisdall (n 132) 160.

them.<sup>138</sup> Contrastingly, the best interest of the child calls for adults to presume that a child has capacity and then to assess to what degree the child's view should be given due consideration depending on that capacity.<sup>139</sup> Importantly, regardless of their level of competence, if a child is able to express their view, they must always be given the 'space and time' to express their opinion.<sup>140</sup> In any event, adults cannot dismiss child participation because of potential risks, rather these risks must be assessed and mitigated.<sup>141</sup>

This poignantly demonstrates adults' inclination to exclude children for the sake of convenience, and is an indication that, unfortunately, adults do not always have children's best interest at heart.<sup>142</sup> In fact, adults often abuse their power over children.<sup>143</sup> However, having children participate in decisions destabilises this power imbalance and helps to reduce abuse and impunity as children can speak up and hold adults accountable for their actions.<sup>144</sup> Further, democratic school governance is 'a means of managing power relations so as to minimise domination.'<sup>145</sup>

Participation that is guided by the best interest principle means that the process must be 'transparent and informative, voluntary, respectful, relevant, facilitated with child-friendly environments and working methods, inclusive, supported by training, safe and sensitive to risk and accountable.'<sup>146</sup> This means that schools must equip learners with the skills and knowledge needed for them to adequately represent their peers and contribute to meaningful decisions.<sup>147</sup> Further, formalities, intimidating settings and alienating language must be eliminated.<sup>148</sup> Thus, adult governors must create an environment that nurtures participation where learners can share their views openly and without fear.<sup>149</sup>

## **2.5. Practicalities of genuine learner participation**

The general approach to children's rights has moved away from viewing children as 'human becomings' who are dependent, vulnerable and passive recipients of human rights.<sup>150</sup> It is now

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<sup>138</sup> As above.

<sup>139</sup> Reyneke (n 18) 211; CRC General Comment 12 (n 1) para 42-44.

<sup>140</sup> Fokala (n 30) 196; Hunt (n 17) 5.

<sup>141</sup> O'Kane (n 128) 60.

<sup>142</sup> Lansdown (n 113) 3.

<sup>143</sup> As above.

<sup>144</sup> Lansdown (n 113) 3.

<sup>145</sup> Thomas (n 124) 216.

<sup>146</sup> Save The Children and South African National Department for Social Development 'National Child Participation Framework' (2018) 3.

<sup>147</sup> Msweli (n 117) 56.

<sup>148</sup> As above.

<sup>149</sup> Shay & Yu (n 69) 8.

<sup>150</sup> A Nylund 'Children's Right to Participate in Decision-Making in Norway: Paternalism and Autonomy' in T Haugli (n 124) 2.

accepted that children are 'autonomous agents' who can make mistakes as well as exercise 'self-determination, voice and choice.'<sup>151</sup> They are stakeholders in their lives at present and not only in the future when they have become adults.<sup>152</sup> In fact, children often are able to understand their own needs and would benefit greatly from being involved in decisions that affect them.<sup>153</sup> Consequently, it is imperative to outline what participation should look.<sup>154</sup>

Whereas mere consultation only seeks views, participation can mean directly partaking in decision-making and is both a process and an outcome.<sup>155</sup> Genuine participation entails that children should believe that their involvement will influence the decision.<sup>156</sup> Moreover, genuine child participation is said to occur when children label their participation as meaningful,<sup>157</sup> and their unique perspectives are valued irrespective of whether it will assist adults in making a decision.<sup>158</sup>

There is no blue-print for genuine participation, and to have one would hinder the flexibility of the process and possibly deny children being involved in a manner that is meaningful to them.<sup>159</sup> However, there are some guidelines for meaningful participation. In order for children to be prepared to participate, information around the issue concerning the children must be made widely available.<sup>160</sup> Further, many views must be accounted for through various methods such as referendums and discussions.<sup>161</sup> Finally, there must be cooperative decision-making that allows for shared management and joint creation of plans and policies.<sup>162</sup>

Further, there are certain characteristics of effective participation which should be present in order to cultivate genuine participation.<sup>163</sup> First, the project at hand must be relevant, linked to the 'day-to-day experience' of the children involved and must protect their rights.<sup>164</sup> Second, children should be involved at the earliest stage of the project.<sup>165</sup> Third, time and resources must be made adequately available for meaningful engagement to occur.<sup>166</sup> Genuine

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<sup>151</sup> As above.

<sup>152</sup> Inter-Agency Working Group on Children's Participation (n 107) 7.

<sup>153</sup> A Nylund 'Children's Right to Participate in Decision-Making in Norway: Paternalism and Autonomy' in T Haugli (n 124) 2.

<sup>154</sup> Inter-Agency Working Group on Children's Participation (n 107) 6.

<sup>155</sup> Thomas (n 124) 199-200.

<sup>156</sup> As above.

<sup>157</sup> A Nylund 'Children's Right to Participate in Decision-Making in Norway: Paternalism and Autonomy' in T Haugli (n 124) 4.

<sup>158</sup> As above.

<sup>159</sup> Lansdown (n 113) 9.

<sup>160</sup> Inter-Agency Working Group on Children's Participation (n 107) 6.

<sup>161</sup> As above.

<sup>162</sup> As above.

<sup>163</sup> Lansdown (n 113) 11.

<sup>164</sup> As above.

<sup>165</sup> As above.

<sup>166</sup> Byrne & Lundy (n 107) 13.

participation requires the upholding of values that foster effective participation such as transparency, inclusivity, diversity, mutual respect, shared decision-making, sharing of relevant information that enables children to make 'real choices,' taking children's views seriously and voluntary involvement of children.<sup>167</sup>

Regarding the process, the purpose of engagement must be clearly established.<sup>168</sup> The process must demonstrate that children will have the capacity to make a difference, including long-term or institutional change, by ensuring that clear goals and targets of the project are jointly established.<sup>169</sup> However, in order to manage expectations, at the start, children must be made aware of the exact decision-making structures.<sup>170</sup> Children must be warned beforehand as to how much realistic influence they will have on the project and if their suggestions are not present in the outcome, they must be given feedback as to why to ensure accountability.<sup>171</sup> More tangibly, child-friendly spaces and language should be utilised.<sup>172</sup> Training can help capacitate both adults and children with the skills necessary for meaningful discussion and engagement.<sup>173</sup> Children can also help develop various suitable methods for their involvement.<sup>174</sup> Finally, there must also be strategies for sustainability.<sup>175</sup>

To bring this together more practically: recognising that children can be successfully involved in managing their own situations such as schools, the South African Social Development Department as well as Save the Children have developed a 'National Child Participation Framework' which recommends the following regarding effective and meaningful participation in a school setting.<sup>176</sup> The creation of platforms that enable children to: firstly, participate as peer educators, mentors, mediators; secondly, advise on policies such as school codes of conduct, the design of schools and playgrounds, recruitment and appraisal of teachers as well as strategies to eliminate discrimination, bullying or corporal punishment in schools; and finally, develop, and evaluate teaching methods and the relevance of curriculum in the face of learners' realities.<sup>177</sup>

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<sup>167</sup> Lansdown (n 113) 11.

<sup>168</sup> M de Wijn (UNICEF) 'Child Participation in Local Governance' (2017) 14.

<sup>169</sup> Lansdown (n 113) 13.

<sup>170</sup> As above.

<sup>171</sup> T Joiner (World Vision) 'International 2022 Global Report on Child Participation in Decision-Making' (2022) 7 & 20.

<sup>172</sup> G Lansdown & C O'Kane (Save the Children) 'A Toolkit for Monitoring and Evaluating Children's Participation Booklet 1: Introduction' (2014) 14.

<sup>173</sup> Lansdown (n 113) 13.

<sup>174</sup> As above.

<sup>175</sup> As above.

<sup>176</sup> Save the Children (n 146) 55-56.

<sup>177</sup> As above.

Importantly, these platforms must be guided by the notion of effective and meaningful participation in order to not be tokenistic.<sup>178</sup> Notably, tokenism is a form of non-participation.<sup>179</sup> This underscores the importance of studying different models of child participation as this can unveil methods on how to go about engendering participation in a manner that sincerely realises this right.

Consequently, research must now turn to the two most significant models on child participation. The first is Hart's ladder of participation.<sup>180</sup> The ladder consists of eight rungs, with the lowest three representing non-participation, starting with manipulation, decoration and then tokenism.<sup>181</sup> The next five rungs represent increasing degrees of participation beginning with assigned but informed; consulted and informed; adult- Initiated, shared decisions with children; child-initiated and directed; and finally, child-initiated, shared decisions with adults.<sup>182</sup> Hart has commented that the ladder may be misleading as it is not necessarily a hierarchy, rather it represents different forms of participation with differing degrees of autonomy.<sup>183</sup> Significantly, the last rung speaks to shared decisions with adults.<sup>184</sup> Hart warns against the delusion of child power where adult engagement is completely removed as article 12 does not provide that children shall have the last say.<sup>185</sup>

Notably, Hart also considers adding two rungs at the bottom of the ladder.<sup>186</sup> The first being active resistance, where adults (because of their beliefs around child incompetence and not burdening a child with responsibility) actively stop children from participating.<sup>187</sup> The second is hindrance where adults discourage children from participating.<sup>188</sup>

The second is Lundy's model for participation.<sup>189</sup> This model looks at four interrelated aspects of child participation: space speaks to making sure children are given 'safe, inclusive opportunities to form and express their view'; voice means that children must be supported in

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<sup>178</sup> R Hart 'Stepping Back from 'The Ladder': Reflections on a Model of Participatory Work with Children' in A Reid *et al* (eds) *Participation and Learning* (2008) 22.

<sup>179</sup> As above.

<sup>180</sup> As above.

<sup>181</sup> As above.

<sup>182</sup> As above.

<sup>183</sup> R Hart 'Stepping Back from 'The Ladder': Reflections on a Model of Participatory Work with Children' in A Reid (n 178) 20.

<sup>184</sup> As above.

<sup>185</sup> R Hart 'Stepping Back from 'The Ladder': Reflections on a Model of Participatory Work with Children' in A Reid (n 178) 25.

<sup>186</sup> R Hart 'Stepping Back from 'The Ladder': Reflections on a Model of Participatory Work with Children' in A Reid (n 178) 28; Fokala (n 30) 194.

<sup>187</sup> As above.

<sup>188</sup> As above.

<sup>189</sup> L Lundy 'Voice is not enough: Conceptualizing Article 12 of the UNCRC' (2007) 33(6) *British Educational Research Journal* 932-933.

expressing their views; audience indicates that participation is more than just voicing their views, rather children must be listened to; and finally, influence is about actually acting on those views.<sup>190</sup>

Lundy's model is quite popular, but Cuevas-Parra has improved upon it by considering how children's intersecting identities may impact these aspects.<sup>191</sup> A child's voice is always inclusive of all aspects of their identities including but not limited to their gender and race.<sup>192</sup> These categories impact children's ability to equitably participate in decision-making.<sup>193</sup> Consequently, cultivating safe spaces requires actively utilising inclusion strategies so that disadvantaged groups of children are not marginalised.<sup>194</sup>

Audience and influence are endowed with an inherent power dynamic as the adults may decide to what extent they will listen to and be influenced by children's views.<sup>195</sup> This power dynamic is further complicated by structural inequalities relating to children's intersecting identities, inequities and vulnerabilities.<sup>196</sup> Thus, accountability mechanisms must be used to safeguard against this potentially harmful dynamic so that children have some recourse when they are ignored or when their input yields no outcome without justification or explanation.<sup>197</sup>

## 2.6. Arguments against learner participation

Despite child participation being an entrenched right with plenty of theoretical backing, there are many arguments against it. The first and most common, is that children are incompetent to contribute to decision-making.<sup>198</sup> Having this as a general assumption completely undermines article 5 of the CRC which speaks to respect for the evolving capacities of children.<sup>199</sup> Article 5 acknowledges that children's capacities are not uniform and change 'frequently based on the child's development and exposure.'<sup>200</sup> Accordingly, respect for children's evolving capacities means appreciating that as children's capacities are strengthened, the need for adult responsibility over them decreases.<sup>201</sup>

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<sup>190</sup> As above.

<sup>191</sup> Cuevas-Parra (n 127) 369; Fokala (n 30) 194.

<sup>192</sup> As above.

<sup>193</sup> Cuevas-Parra (n 127) 370.

<sup>194</sup> Cuevas-Parra (n 127) 373.

<sup>195</sup> Cuevas-Parra (n 127) 369.

<sup>196</sup> As above.

<sup>197</sup> Cuevas-Parra (n 127) 373-374.

<sup>198</sup> Lansdown (n 113) 8.

<sup>199</sup> Art 5 CRC; Save the Children (n 146) 9.

<sup>200</sup> G Lansdown (UNICEF) 'The Evolving Capacities of the Child' (2005) x; Fokala (n 30) 196.

<sup>201</sup> Fokala (n 30) 197.

Encouragingly, the relationship between competence and participation is mutually beneficial.<sup>202</sup> Participation strengthens competence because it exposes children to new challenges, which demand the development of current and new capacities.<sup>203</sup> In turn, when their capacity is furthered, the quality of participation increases.<sup>204</sup> Thus, rather than assuming incompetence and excluding children, children's capacities must be assessed in order to determine the extent of consideration that their views will be given.<sup>205</sup>

However, this assessment should not silence them if their input is found to be not 'rational' enough.<sup>206</sup> Only listening to children when their views are subjectively rational, is an indication how deeply children's assigned subaltern status has been entrenched in society.<sup>207</sup> Institutions continue to reinforce this status in subtle and systemic ways by not including children, resulting in children lacking the social and cultural capital necessary for them to tap into invisible adult networks and be taken seriously by adults or to even take themselves seriously.<sup>208</sup> This pushes children further into the brink and the perpetual 'culture of non-participation' continues to be endemic.<sup>209</sup>

The reality is that, when children are given adequate information, support and are empowered to express themselves in a manner meaningful to them, children are able to contribute to decisions that affect their lives.<sup>210</sup> Children should not be underestimated as there are ample examples of children proving that they have the capacity to make great changes in their own lives.<sup>211</sup> In Nicaragua, children of the 'Child-to-Child' project showed an exemplary ability to identify a myriad of problems plaguing their community, one of which being the sanitary risks that garbage on the streets posed.<sup>212</sup> After concluding that the heart of the issue was lack of community organisation, the group mobilised to clean their streets.<sup>213</sup> This is a display that proves that, when children are empowered to improve their lives, they are capable of doing so.<sup>214</sup>

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<sup>202</sup> Lansdown (n 200) 17.

<sup>203</sup> M Fler & M Hedegaard 'Children's Development as Participation in Everyday Practices across Different Institutions' (2010) 17 *Mind, Culture, and Activity* 150-151; M Jane & J Wanjiru 'Good Governance Practices and Promotion of Child Friendly Schools Model' (2019) *Machakos University 2nd Annual International Conference* 23.

<sup>204</sup> Lansdown (n 200) 17.

<sup>205</sup> A Nylund 'Children's Right to Participate in Decision-Making in Norway: Paternalism and Autonomy' in T Haugli (n 124) 3.

<sup>206</sup> As above.

<sup>207</sup> As above.

<sup>208</sup> Thomas (n 124) 202 & 212.

<sup>209</sup> As above.

<sup>210</sup> Save the Children (n 146) 12.

<sup>211</sup> Lansdown (n 113) 15.

<sup>212</sup> Lansdown (n 113) 21.

<sup>213</sup> As above.

<sup>214</sup> As above.



Children are also capable of understanding social responsibility and acting as protectors of other children's rights.<sup>215</sup> In a heartwarming effort of solidarity, the 'Brother join Meena' project in Pakistan saw young boy scouts going to homes in neighbourhoods advocating for girls' right to education and children's right to health.<sup>216</sup> They would collect data, inform families of the importance of immunisation, building latrines, sending girls to school and also monitor the progress of these households.<sup>217</sup>

Children can also successfully participate in governance structures with heavier responsibilities. In Brazil the Children's City Council of Barra Mansa consisted of 36 children ranging from ages 9 to 15, who were selected by their peers to govern at the municipal level.<sup>218</sup> Using a portion of the city's budget, the children were responsible for managing city schooling projects and facilities including 'repairs to equipment in public schools, improvement of playground facilities and tree planting.'<sup>219</sup> Notably, support from adults was necessary to achieve this feat - staff of the mayor's office as well as volunteers of NGOs acted as facilitators for logistical arrangements and training.<sup>220</sup>

Another argument is that children must first learn to accept responsibility.<sup>221</sup> However, the more effective way to teach children responsibility is to give children the opportunity to have their opinions taken seriously and to let them learn to respect others' opinions in discussions.<sup>222</sup> Importantly, society should not hold double standards for children. Adults are not required to prove that they will act responsibly before they enjoy the right to vote (this is despite them being unlikely to have been prepared to engage with responsibilities of citizenship before the age of 18).<sup>223</sup> Allowing children to participate teaches children the importance of acting responsibly in a democratic environment.<sup>224</sup>

On the other hand, some adults argue that children should not be burdened with responsibility as this takes away from their childhood.<sup>225</sup> Childhood is actually a social construction and this romantic view of it, negates its complexity - some children's lived reality is that they are faced with challenges regarding conflict and even hold key social roles within their families and their

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<sup>215</sup> Lansdown (n 113) 23.

<sup>216</sup> As above.

<sup>217</sup> As above.

<sup>218</sup> Inter-Agency Working Group on Children's Participation (n 107) 18.

<sup>219</sup> As above.

<sup>220</sup> As above.

<sup>221</sup> Lansdown (n 113) 8.

<sup>222</sup> As above.

<sup>223</sup> Save the Children (n 146) 12.

<sup>224</sup> As above.

<sup>225</sup> Lansdown (n 113) 8.

friend groups.<sup>226</sup> Moreover, children's various identities cause them to deal with the consequences of inequities and marginalisation on a daily basis.<sup>227</sup> Acknowledging this, and allowing children to have a say on how to deal with these problems is more important than preserving an artificial notion that all children enjoy a pleasant childhood where they remain innocent and unburdened.<sup>228</sup>

Adults also seem to be afraid that if children participate (and enjoy some share of power), they will disrespect adults.<sup>229</sup> However, mutual respect is a foundational aspect of democratic governance.<sup>230</sup> Children will learn to listen to other opinions by understanding that they are not the only stakeholder with a right to participate.<sup>231</sup> Child participation does not mean a reign of terror by children. The right to participate does not allow for full autonomy where children have 'full control over all decisions irrespective of their implications either for themselves or others.'<sup>232</sup> Rather, learner participation actually allows for better compliance with school rules, codes and policies.<sup>233</sup> This is because learners will be more open to accepting decisions as legitimate, if they help to shape those decisions.<sup>234</sup> Further, they are likely to better understand and embody school values.<sup>235</sup>

There is also a perception that allowing children to participate goes against cultural and traditional norms.<sup>236</sup> If this is true, it is important to remember that the CRC does challenge the way cultural values impact child rights.<sup>237</sup> Further, cultural environments are dynamic and ever-changing (for example, even though women have been historically marginalised by traditions, this cannot be used to justify further oppression).<sup>238</sup> Further, there must be caution that this narrow conception is more rooted in the Global North, where the bulk of child participation has been analysed.<sup>239</sup> There are other parts of the world, including the Global South, where young children participate through apprenticeships and 'learn through their interaction with more experienced members of their community, including other children.'<sup>240</sup>

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<sup>226</sup> As above.

<sup>227</sup> Cuevas-Parra (n 127) 366.

<sup>228</sup> As above.

<sup>229</sup> Lansdown (n 113) 8.

<sup>230</sup> Hunt (n 17) 2; Carr & Williams (n 123) 80.

<sup>231</sup> Lansdown (n 113) 8.

<sup>232</sup> As above.

<sup>233</sup> As above.

<sup>234</sup> Mabovula (n 46) 222.

<sup>235</sup> Phaswana (n 44) 106.

<sup>236</sup> Save the Children (n 146) 12.

<sup>237</sup> As above.

<sup>238</sup> O'Kane (n 128) 62.

<sup>239</sup> R Hart 'Stepping Back from 'The Ladder': Reflections on a Model of Participatory Work with Children' in A Reid (n 178) 20.

<sup>240</sup> As above.

Finally, adults are hesitant to invest in child participation as any project involving them will experience perpetual 'haemorrhaging' as children grow into adults.<sup>241</sup> This should not be a barrier to participation. Rather, it emphasises the importance of having a mix of children of all ages so that younger children constantly learn the workings of the system from the experience of older children which ensures the continuity and sustainability of child participation.<sup>242</sup>

## **2.7. Conclusion**

Child participation is undoubtedly extremely complex and must be carried out in a manner that is sensitive and responsive to both the concerns of children and adults. However, this chapter has proven that using foundational principles of democratic values, non-discrimination and the best interest of the child along with methods for effective and meaningful participation and models of participation, creates a matrix for engendering genuine participation. It is also shown that pushback by adults can be mitigated by using a human rights approach to debunking myths around the challenges of child participation.

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<sup>241</sup> Lansdown (n 113) 17.

<sup>242</sup> R Hart 'Stepping Back from 'The Ladder': Reflections on a Model of Participatory Work with Children' in A Reid (n 178) 20.

## CHAPTER 3

### SOUTH AFRICA'S LEGAL FRAMEWORK ON LEARNER PARTICIPATION IN SCHOOL POLICY DECISION-MAKING

#### 3.1. Introduction

As a point of departure, formal aspects of learner representation and participation within the national and provincial framework are unpacked. Furthermore, considering that students on SGBs have often just been a marker of tokenism with schools only allowing their membership as a tick-box exercise, an investigation as to whether legislation covers the substantive aspects of learner participation is pursued.<sup>243</sup> Finally, SGBs are often accused of exacerbating discrimination and inequality.<sup>244</sup> Thus, analysis turns to whether there are legal provisions that ensure diversity, inclusion and non-discrimination.

#### 3.2. National and provincial laws on formal learner representation

SASA prescribes that the SGB of ordinary public schools must be composed of elected members which includes parents, educators, staff who are not educators and learners in the eighth grade or higher at the school.<sup>245</sup> Non-elected members include the principal and co-opted members.<sup>246</sup> Further, the learners referred to, must be elected by the RCL.<sup>247</sup> On the surface, it appears that it was the legislature's intention to adhere to democratic principles by allowing a devolution of power to relevant stakeholders in the school.<sup>248</sup> While it can be appreciated that learners are indeed acknowledged as a stakeholder, the Act does not go much further.

This is concerning as it would be in the best interest of the child to delineate more details on learner participation, especially concerning complexities such as capacity.<sup>249</sup> It is true that a child's capacity implicates the weight of their opinion on a matter.<sup>250</sup> Thus, voting processes could be complicated by child capacities. While learner governors do enjoy voting rights, SASA does not always indicate how this process would work.<sup>251</sup> The only instance where capacity

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<sup>243</sup> As above.

<sup>244</sup> Mncube (n 51 above) 78.

<sup>245</sup> Sec 23 SASA (n 11).

<sup>246</sup> As above.

<sup>247</sup> Sec 23(4) SASA (n 11).

<sup>248</sup> Sayed (n 104) 7-8.

<sup>249</sup> CRC General Comment 12 (n 1) paras 42-44.

<sup>250</sup> As above.

<sup>251</sup> Sec 23(8) SASA (n 11).

seems to be acknowledged is where SASA considers the 'status of minors on governing bodies of public schools.'<sup>252</sup> This section provides that minors cannot contract on behalf of the school, nor can they vote on resolutions that impose liabilities on third parties or the school. Further, minors do not incur 'personal liability for any consequence of his or her membership.'<sup>253</sup>

While learners should be protected concerning sensitive matters (such as contracting) where consequences may negatively affect them, not allowing learners to vote should not mean that they should be completely excluded from the decision-making process.<sup>254</sup> Rather, SASA should indicate that the weight of learner governors' opinions regarding more sensitive decisions may vary.<sup>255</sup> Importantly, it should underscore that learners' views must always be regarded.<sup>256</sup>

Other relevant specifications that affect true learner participation includes the age, number and term of office of learner governors as well as provisions accounting for equitable representation regarding race, gender, sexual orientation and disability.<sup>257</sup> Regrettably, SASA does not cover these aspects generally. However, the only potential ground for discrimination that is mildly acknowledged by SASA seems to be disability.<sup>258</sup> SASA provides that ordinary schools that cater for learners with special needs, 'where practically possible' must 'co-opt a person or persons with expertise regarding the special education needs of such learners' to form part of the SGB.<sup>259</sup> Ironically, it does not mandate representation of the actual learners with special needs themselves.

As far as all the other aspects are concerned, the gap seems to be intentional in order to further decentralisation.<sup>260</sup> These aspects are not addressed by SASA, but are left to be determined by the provincial legislatures. The table below is a summary of how Gauteng, Kwa-Zulu Natal (KZN), Mpumalanga and Western Cape address these aspects.

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<sup>252</sup> Sec 32 SASA (n 11).  
<sup>253</sup> As above.  
<sup>254</sup> Phaswana (n 44) 106.  
<sup>255</sup> Hunt (n 17) 5.  
<sup>256</sup> As above.  
<sup>257</sup> Cuevas-Parra (n 127) 369.  
<sup>258</sup> Sec 23(5) SASA (n 11).  
<sup>259</sup> As above.  
<sup>260</sup> Lewis & Naidoo (n 25) 100.

**TABLE 2: Summary of provincial legislation regarding learner members of SGBs.**

Province	Type of learner governor	Age of learner governors	Number of learner governors	Term of office of learner governors	Provision accounting for equitable representation of learner governors
Gauteng	RCL only (and must include chairperson of RCL). <sup>261</sup>	No specification as to age except that the executive of the RCL may not be from grade 12. <sup>262</sup>  Resultantly, since one of the learner members must be the chairperson, that learner member will not be from grade 12.	If the school has less than 630 learners, then 2 learner members are required among the 13 members in total. <sup>263</sup>  If the school has more than 630 learners, then 3 learner members are required among the 17 members in total. <sup>264</sup>	One year. <sup>265</sup>	No.
KZN	RCL only. <sup>266</sup>	No specific requirement.	If the school has less than 650 learners, then 2 learner members are required among the 13 members in total. <sup>267</sup>	One year. <sup>269</sup>	No.

<sup>261</sup> Sec 16(7) 'Governing Body Regulations for Public Schools' Gauteng General Notice 786 of 1997.

<sup>262</sup> Sec 4(4) 'Draft Notice of Determination of Guidelines for the Establishment of the Representative Council of Learners' Gauteng General Notice 486 of 2002.

<sup>263</sup> Schedule E Gauteng SGB Regulations (n 261).

<sup>264</sup> As above.

<sup>265</sup> Sec 12(2) Gauteng SGB Regulations (n 261).

<sup>266</sup> Sec 4(d) 'Notice relating to election of members of Governing Bodies for Public Ordinary Schools (excluding Schools for Learners with Special Education Needs)' Kwa-Zulu Natal Provincial Notice 119 of 2017.

<sup>267</sup> Schedule A KZN SGB Regulations (n 266).

<sup>269</sup> Sec 3(5) KZN SGB Regulations (n 266).

			If the school has more than 650 learners, then 3 learner members are required among the 17 members in total. <sup>268</sup>		
Mpumalanga	RCL only. <sup>270</sup>	No specific requirement.	<p>If the school has less than 650 learners, then 2 learner members are required among the 13 members in total.<sup>271</sup></p> <p>If the school has more than 650 learners, then 3 learner members are required among the 17 members in total.<sup>272</sup></p>	One year. <sup>273</sup>	Yes. Seeks to achieve 'the highest practicable level of representativity' considering race, gender and disability. <sup>274</sup>
Western Cape	RCL only. <sup>275</sup>	No specific requirement.	<p>Irrespective of size of school, 2 learners of a total of 13 members.<sup>276</sup></p> <p>However,</p>	One year. <sup>278</sup>	No.

<sup>268</sup> As above.

<sup>270</sup> Sec 26(a) Mpumalanga SGB Regulations (n 102).

<sup>271</sup> Schedule A Mpumalanga SGB Regulations (n 102).

<sup>272</sup> As above.

<sup>273</sup> Sec 9(2) Mpumalanga SGB Regulations (n 102).

<sup>274</sup> Sec 6 Mpumalanga SGB Regulations (n 102).

<sup>275</sup> Sec 22 'Determination of the Functions and Procedures for the Establishment and Election of Representative Councils of Learners at Public Schools' Western Cape Provincial Notice 272 of 2014.

<sup>276</sup> Sec 2(1)(d) 'Measures relating to governing bodies and a representative council of learners for public schools (excluding public schools for learners with special education needs)' Western Cape Provincial Notice 164 of 2008.

<sup>278</sup> Sec 4(1) Western Cape SGB Regulations (n 276).

			SGB may apply in writing to the Member of Executive Council to approve of an alternate composition, should it be in the school's interest. <sup>277</sup>		
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All four provinces mandate RCL representation only. For this reason, it is necessary to look at provincial regulation regarding RCL. Gauteng, KZN and Mpumalanga provide that each class in grades 8 and higher must democratically elect 2 class representatives who will come to constitute the RCL.<sup>279</sup> Gauteng specifies that executive members (chairperson, deputy-chairperson, secretary and treasurer) may not be grade 12 learners.<sup>280</sup> Western Cape allows only 3 elected learners per grade.<sup>281</sup> Thus, in all cases, RCL should be made up of learners with a range of ages.

Turning back to SGB composition, many factors are implicated. Regarding the aspects of age and number, it is a concern that despite the RCL containing learners of different ages, there is only room for 2 or 3 learner governors on the SGB. This means that not all age groups are duly represented on the SGB. This flies in the face of the best interest of the child as having a mix of ages allows for a system of continuity as younger learners gain skills and knowledge from interacting with their older peers.<sup>282</sup>

Moreover, with the number of learner governors being either 2 of a total of 13 governors or 3 a total of 17 governors in larger schools, it is clear that learner governors are heavily outweighed in number by adult governors. This exacerbates unfair power dynamics between adult and learner governors, inhibiting the effectiveness of learner participation.<sup>283</sup>

<sup>277</sup> Sec 2(11) Western Cape SGB Regulations (n 276).

<sup>279</sup> Sec 6(1) Gauteng RCL Guidelines (n 262); Sec 5 'Notice for the Establishment, Election and Functioning of the Representative Councils of Learners at Public Schools' Kwa-Zulu Natal Provincial Notice 478 of 2023; Sec 4 'Notice of Determination of Guidelines for Establishment, Election and Functions of Representative Council of Learners' Mpumalanga Official Notice 4 of 1997.

<sup>280</sup> Sec 4(4) Gauteng RCL Guidelines (n 262).

<sup>281</sup> Sec 2(1) Western Cape RCL Guidelines (n 275).

<sup>282</sup> R Hart 'Stepping Back from 'The Ladder': Reflections on a Model of Participatory Work with Children' in A Reid (n 178) 20.

<sup>283</sup> Thomas (n 124) 202 & 212.



Regarding term of office, all four provinces mandate that learner members may only be on the SGB for one year, in comparison with adult governors who may sit on the board for up to three years.<sup>284</sup> Once again, this is a barrier to participation, aggravating the unfair power dynamic as adult governors have a more stable seat, while learner governors seemingly more temporary seat perpetuates the perception that they are inexperienced.<sup>285</sup> In any event, the regulations are unclear as to whether it is possible to re-elect the same learner for another term.

### **3.3. National and provincial laws on substantive learner participation**

Before looking further into whether education laws are ensuring effective and meaningful participation, it is important to explore how these laws frame the RCL's role regarding learner participation in decision-making considering that RCL members become elected learner governors on the SGB.

Mpumalanga's approach is moderate, only mandating that RCL represent the needs of learners.<sup>286</sup> Western Cape expects RCL to represent learners in general but also that RCL members on SGBs raise issues that are of concern to the RCL in SGB meetings.<sup>287</sup> Gauteng stipulates that RCL that are SGB members must merely report back to the other RCL but also that they share opinions on issues relating to the general learner body.<sup>288</sup>

KZN is by far the most progressive as RCL are expected to 'create an opportunity for the expression of learners in matters concerning their education' but also to enable all learners in general to 'participate in decision-making processes regarding the school.'<sup>289</sup> Further, RCL should identify and train future leaders - this is helpful in terms of the concerns around continuity and inexperience of RCL that are SGB members.<sup>290</sup>

While outlining the role of RCL does not speak directly to ensuring true participation, it does detail an idea about the general approach to and perceptions around learner participation in decision-making. Nonetheless, there are still gaping holes in terms of securing true participation. First, there is no mandate that learner governors are prepped before SGB

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<sup>284</sup> Sec 12(1) Gauteng SGB Regulations (n 261); Sec 3(1) KZN SGB Regulations (n 266); Sec 9(1) Mpumalanga SGB Regulations (n 102); Sec s 4(1) Western Cape SGB Regulations (n 276).

<sup>285</sup> Hunt (n 17) 5.

<sup>286</sup> Sec 18 Mpumalanga RCL Guidelines (n 279).

<sup>287</sup> Sec 6 Western Cape RCL Guidelines (n 275).

<sup>288</sup> Sec 7 Gauteng RCL Guidelines (n 262).

<sup>289</sup> Sec 13 KZN RCL Guidelines (n 279).

<sup>290</sup> As above.

meetings, and that they must discuss any issues arising with the entire learner body in good time.<sup>291</sup> Further, guidelines on opening up sufficient space for participation of the learner body through different methods such as referendums is not mentioned.<sup>292</sup>

Although learners are recognised stakeholders, there is no sincere commitment toward true learner participation. There are no provisions on training and capacity-building for all SGB members to sensitise adult governors to use child-friendly language which would enable learners' expression and engagement as well as create child-friendly spaces.<sup>293</sup> Training and capacity building could also better imbue values of democratic school governance and true learner participation (such as transparency, inclusivity, diversity, mutual respect, shared decision-making, sharing of relevant information) in SGB processes.<sup>294</sup>

In measuring the current legal framework against Lundy's model for participation, a major concern is clear regarding the aspects of audience and influence.<sup>295</sup> As previously noted, the small number of learner representatives on the SGB exacerbates the already unequal power dynamic that exists between adults and children.<sup>296</sup> This power dynamic affects true participation as it impacts children's influence over the decisions they are participating.<sup>297</sup> Nonetheless, learners must be informed of the extent of that influence.<sup>298</sup> In most cases, learner governors are enfranchised SGB members and thus, have some influence over decision-making.<sup>299</sup> However, due to there being a small number of learner representatives, their vote may be heavily outweighed by adult governors.

Provincial legislatures have provided more details regarding the voting process, but the approach does not seem to favour learner participation. Western Cape and KZN both provide that quorum constitutes the majority of the enfranchised members.<sup>300</sup> In other words, if the 2 or 3 learner governors were absent, a vote could still be successful. This means that there is a lack of safeguards ensuring learner representation and influence over decision-making processes of the SGB. Gauteng goes as far as to stipulate that quorum means 50% of enfranchised members 'plus one of which the majority shall be parent members.'<sup>301</sup>

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<sup>291</sup> Save the Children (n 146) 24.

<sup>292</sup> Inter-Agency Working Group on Children's Participation (n 107) 6.

<sup>293</sup> Save the Children (n 146) 24.

<sup>294</sup> Lewis & Naidoo (n 25) 102.

<sup>295</sup> Lundy (n 189) 932-933.

<sup>296</sup> Cuevas-Parra (n 127) 369.

<sup>297</sup> O'Kane (n 128) 9; Lansdown (n 113) 11.

<sup>298</sup> As above.

<sup>299</sup> Sec 23(8) SASA (n 11).

<sup>300</sup> Sec 21(4) Western Cape SGB Regulations (n 269); Sec 24(3) KZN SGB Regulations (n 266).

<sup>301</sup> Sec 39(2) Gauteng SGB Regulations (n 261).

Ultimately, these cracks in the legal framework ought to be filled in order to ensure true effective and meaningful child participation. Safeguards would help to avoid active resistance, hindrance and manipulation by adult governors and avoid tokenism of learner governors.<sup>302</sup> In turn, this would ensure that Hart's conceptions of true child participation where adult-initiated, shared decisions with children or child-initiated, shared decisions with adults can be realised.<sup>303</sup>

### **3.4. National and provincial laws on non-discrimination and inclusion in learner participation**

Lundy's aspects of voice, space, audience and influence in child participation should be anchored by non-discrimination.<sup>304</sup> Since it is understood that children's identities affect their participation, there ought to be provisions made for equitable participation in SGBs.<sup>305</sup> In line with this, Mpumalanga seems to cater for this issue as it calls for 'the highest practicable level of representativity' of all SGB members considering race, gender and disability.<sup>306</sup> In its nomination process, KZN also accounts for representativity regarding race and gender and 'wherever possible' the inclusion of people with disabilities.<sup>307</sup> Gauteng takes a slightly more generalised approach, but does allow for consideration of 'addressing the imbalances of the past by the election of SGBs whose racial and gender mix reflect that of the school community.'<sup>308</sup> Western Cape does not address the matter at all.

Since regulations relating to SGBs seem quite weak in directly addressing equitable representation, it comes as a relief that this agenda is advanced in terms of regulation of RCL representation. This is important since all four provinces only allow RCL members to sit on the SGB. Gauteng provides that RCL 'should reflect the racial composition of the school.'<sup>309</sup> Unfortunately, gender is still regarded in the binary sense as it is mandated that class representatives (who become RCL members) of classes of males and females must have one male and one female representative.<sup>310</sup>

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<sup>302</sup> R Hart 'Stepping Back from 'The Ladder': Reflections on a Model of Participatory Work with Children' in A Reid et al (eds) *Participation and Learning* (2008) 22-28.

<sup>303</sup> As above.

<sup>304</sup> Cuevas-Parra (n 127) 369.

<sup>305</sup> As above.

<sup>306</sup> Sec 6(1) Mpumalanga SGB Regulations (n 102).

<sup>307</sup> Sec 14(4)(f) KZN SGB Regulations (n 266).

<sup>308</sup> Sec 3(i) Gauteng SGB Regulations (n 261).

<sup>309</sup> Sec 6(2) Gauteng RCL Guidelines (n 262).

<sup>310</sup> As above.

In contrast, KZN defines gender diversity as ‘the inclusion of male, female, lesbian, gay, bisexual, transgender, queer, intersex and all other forms of gender identity, where applicable.’<sup>311</sup> The regulations further mandate that RCL members ‘must be representative of the school community’ and must account for gender diversity and that a ‘racially integrated school’ must encourage learners ‘to promote equitable representation of racial groups.’<sup>312</sup>

Disappointingly, the Western Cape seems decidedly silent on the matter. Conversely, Mpumalanga directly regulates SGB composition in terms of equitable representation, and also regulates RCL membership outlining that ‘consideration shall be given to addressing gender inequality and racial imbalances so as to reflect that of the school community.’ It further requires that the two class representatives that become RCL must not be of the same gender unless the relevant class only consists of one gender.<sup>313</sup>

Considering that Gauteng does not address equitable representation regarding SGB members, it can only be hoped that the regulations on RCL will assist in having the few RCL members on the SGB be more representative. However, this is seemingly difficult considering that there is only room for 2 or 3 learners. Western Cape is in a worse off position as it does not consider equitable representation at the SGB or RCL level. Mpumalanga and KZN’s more progressive position is welcomed.

In analysing provisions for learners with disabilities specifically, there are instances where ordinary public schools cater for children with special needs. The provinces are mandated to follow SASA, which provides that the SGB must have a co-opted member with expertise on special education needs.<sup>314</sup> Notably, co-opted members do not have voting rights.<sup>315</sup> Further, the SGB must establish a committee on special education needs.<sup>316</sup> The establishment of a committee is commendable, but it remains a concern that there is no call for representation of the learners with special needs themselves and their interests are further minimised by not allowing the co-opted expert to vote. KZN is the only province that specifically addresses the matter as nominations for SGB members must ‘wherever possible’ include people with disabilities.<sup>317</sup>

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<sup>311</sup> Sec 1 KZN RCL Guidelines (n 279) .

<sup>312</sup> Sec 5(1) KZN RCL Guidelines (n 279) .

<sup>313</sup> Secs 3(g) and 4 Mpumalanga RCL Guidelines (n 279).

<sup>314</sup> Sec 23(5) SASA (n 11).

<sup>315</sup> Sec 23(8) SASA (n 11).

<sup>316</sup> Sec 30(2) SASA (n 11).

<sup>317</sup> Sec 14(4)(f) KZN SGB Regulations (n 266).

RCL regulation is more confusing. All four provinces seem to have only one regulation for both ordinary schools and schools for learners with special education needs. Gauteng, Western Cape and Mpumalanga do not seem to acknowledge special needs schools, while KZN seems to consider this, mandating that if the school has no identifiable grades, the RCL must be made of learners that are 13 or older but the school can also apply for an exemption as to the establishment of RCL.<sup>318</sup> Discouragingly, none of the provinces provide what ought to happen in the instance that an ordinary school caters for special needs learners. Thus, it can be concluded that these learners' representation and interests are disregarded.

### **3.5. Conclusion**

Conclusively, not only is true effective and meaningful participation undermined by the general lack of safeguards, the position that SASA as well as provincial legislation takes especially regarding the type, age, number, and term of office of learner governors on SGBs is also a barrier to participation. Most notably, given that South Africa's history is marred by unfair discrimination and that a central tenet of true participation is non-discrimination, the law's lukewarm approach to equitable representation is regrettable, especially in Western Cape which seems to show the least concern for this issue.

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<sup>318</sup> Sec 2(2) KZN RCL Guidelines (n 279).

## CHAPTER 4

### GOVERNMENT AND SCHOOL POLICY POSITIONS ON DEMOCRATIC LEARNER PARTICIPATION, NON-DISCRIMINATION AND INCLUSION

#### 4.1. Introduction

It must be reiterated that child participation is both a process and an outcome.<sup>319</sup> While the previous chapter assessed the process, this chapter turns to laws relating to the products of learner participation (that being school policies). It is then appropriate to look at some examples of school policies to analyse whether learner participation, democratic values, non-discrimination and the best interests of the child are reflected.<sup>320</sup> If these aspects are reflected in SGB policies, then it can be said that true effective and meaningful participation has occurred, as learners' interests would have been expressed and taken into consideration.

#### 4.2. Government policies and guidelines relating to non-discrimination and inclusion

Notably, the biggest flaw in the current legal framework is the lack of will to ensure equitable representation, despite this being crucial for true learner participation.<sup>321</sup> Thus, before analysing SGB policies themselves, it is worth looking into the laws that regulate SGB policies, especially those regarding language, codes of conduct, uniforms, and religion. These areas are focal as they seem to be the areas which are most at risk regarding discrimination as evidenced by the proliferation of litigation against SGBs in this regard.<sup>322</sup>

Beginning with language policies, SASA stipulates that the SGB is responsible for determining the school's language policy subject to the Constitution, SASA and provincial laws.<sup>323</sup> SASA explicitly outlines that there must be no racial discrimination when implementing language policies.<sup>324</sup> The National Language Policy further promotes and values multilingualism and cultural diversity, while aiming to 'redress the neglect of the historically disadvantaged language' in the school.<sup>325</sup> In light of this, it requires SGBs to demonstrate how it promotes multilingualism.<sup>326</sup> If learners requesting a new medium of instruction not already offered by the school meet the required threshold for the request, the head of the provincial department

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<sup>319</sup> Thomas (n 124) 199-200.

<sup>320</sup> African Children's Committee Guidelines on Child Participation (n 38) 15-20.

<sup>321</sup> Cuevas-Parra (n 127) 369.

<sup>322</sup> Sujee (n 92) 82-99.

<sup>323</sup> Sec 6 SASA (n 11).

<sup>324</sup> As above.

<sup>325</sup> Sec A(1) Norms and Standards for Language Policy in Public Schools GN 1701 in GG 18546 of 1997.

<sup>326</sup> Sec C National Language Policy (n 325).

of education will decide on how to address the request. SGBs play a role here as it is responsible for advising the Head of Department.<sup>327</sup>

An upcoming development affecting school governance is the Basic Education Laws Amendment Bill (BELA Bill) which aims to amend, among others, certain outdated provisions regarding school governance.<sup>328</sup> This Bill was recently adopted by the Portfolio Committee on Basic Education and is due to be tabled in Parliament soon.<sup>329</sup> Concerning language policies, clause 5 would amend section 6 of SASA by ordering the Head of Department to take into consideration the learners' best interests, the decreasing number of learners that speak the relevant language, using school resources effectively and the broader community's language needs.<sup>330</sup>

Despite the current provisions for anti-discrimination, there has still been an issue in some schools. In *Head of Department: Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another*, the Constitutional Court dealt with the issue of the SGB of an Afrikaans-medium school, which was not filled to capacity, refusing to take in English speaking learners, despite other schools in the area being filled beyond capacity.<sup>331</sup> The Head of Department then attempted to limit the powers of the SGB and appointed a committee that determined a dual-medium language policy.<sup>332</sup>

The Court found that the Head of Department's actions were not procedurally sound, but it also ordered the SGB to revise its language policy taking into 'cognisance of the broader community.'<sup>333</sup> The Court further emphasised the need for equal access to education in a society where inaccessibility perpetuates socio-economic disadvantage and entrenches inequality.<sup>334</sup> The Court also reminded the SGB that a public school is a public resource that must be managed according to the best interests of the learners, parents and broader community.<sup>335</sup>

This case is a good demonstration of how much decision-making power SGBs actually hold, and how impactful their policies can be. Given the gravity of SGB's policy-making decisions,

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<sup>327</sup> As above.

<sup>328</sup> Basic Education Laws Amendment Bill GG 45601 of 2021.

<sup>329</sup> Parliamentary Monitoring Group 'Basic Education Laws Amendment (BELA) Bill: adoption; with Deputy Minister' 26 September 2023 <https://pmg.org.za/committee-meeting/37584/> (accessed 11 October 2023).

<sup>330</sup> Sujee (n 92) 96-97.

<sup>331</sup> *Department of Education and Another v Hoërskool Ermelo and Another* 2010 (2) SA 415 (CC).

<sup>332</sup> As above.

<sup>333</sup> Sujee (n 92) 91.

<sup>334</sup> A Skelton 'The role of the courts in ensuring the right to a basic education in a democratic South Africa: a critical evaluation of recent education case law' (2013) 46(1) *De Jure* 16-17.

<sup>335</sup> As above.

it is essential that learners are adequately represented and can participate. While it is true that better learner participation would have probably not prevented the situation in *Ermelo*, the case is used to show how discriminatory practices may be carried out by SGBs.<sup>336</sup> For instance, if the school did become dual-medium, it would be important to have both Afrikaans and English-speaking learners on the board so that each stakeholder could advocate for their group's interests. The same can be said in instances where the learner body requests to be taught in a particular language. Those learners should be well represented and able to participate in SGB meetings so that a more inclusive picture is presented when the SGB advises the Head of the Provincial Department who will decide on the matter.<sup>337</sup>

The next pertinent function of SGBs is the determination of a school code of conduct which usually entails rules regarding uniforms and dress codes. SASA provides that SGBs must adopt a code of conduct after consulting learners, parents and educators.<sup>338</sup> The inclusion of relevant stakeholders beyond the SGB is welcome as it pays reverence to the spirit of democratic school governance.<sup>339</sup>

Further, there are national guidelines for SGBs adopting a code of conduct which house principles and values regarding learners' rights including the upholding of learners' human rights as well as their 'democratic right to due process and to participate in decision-making' and also to have their opinions accounted for regarding matters affecting them.<sup>340</sup>

Moreover, the rights to non-discrimination, equality, dignity, and freedom of expression are promoted.<sup>341</sup> The guidelines expand on freedom of expression, detailing that it concerns more than just free speech, rather it is inclusive of the 'right to seek, hear, read and wear' which has implications on clothing choice and hairstyles.<sup>342</sup> The importance of the Guidelines' values are underscored in *Antonie v Governing Body, The Settlers High School and Others* where the High Court found that these values must be used to interpret schools' codes of conduct.<sup>343</sup> Thus, it is clear that SGBs ought to 'consider the religious, cultural and racial diversity' of learners, and after engaging with learners, should develop rules that reflect this diversity, and are inclusive and accommodating.<sup>344</sup>

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<sup>336</sup> *Ermelo* (n 331).

<sup>337</sup> Sec C National Language Policy (n 325).

<sup>338</sup> Sec 8 SASA (n 11).

<sup>339</sup> Lansdown (n 113) 9.

<sup>340</sup> Sec 4 Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners GN 776 IN GG 18900 of 1998.

<sup>341</sup> As above.

<sup>342</sup> As above.

<sup>343</sup> *Antonie v Governing Body, The Settlers High School and Others* 2002 (4) SA 738 (C); Sujee (n 92) 90.

<sup>344</sup> Sujee (n 92) 90.



Despite this, the 2016 incident regarding learners of Pretoria Girls High protesting against the discriminatory nature of their school's Code of Conduct is well-known.<sup>345</sup> The Code of Conduct provided that the school's core values included 'ubuntu' and 'equality and inclusivity'.<sup>346</sup> Its rules concerning hairstyles set out that all styles must be conservative and neat.<sup>347</sup> Learners claimed that instead of using the core values to interpret these hair regulations, the Code of Conduct was interpreted to prevent girls of African descent from wearing afros.<sup>348</sup> Further, staff had made discriminatory (and even derogatory) remarks concerning other natural hairstyles such as dreadlocks, and despite its holding cultural significance, learners were also chastised for wearing 'doeks'.<sup>349</sup>

Controversy around hair and race is not just a South African problem, the UN Committee on the Elimination of Racial Discrimination has condemned Jamaican school restrictions of 'hairstyles, inter alia, braids, beads or dreadlocks' which have 'a disparate impact on students of African descent'.<sup>350</sup> In a country that so recently liberated itself from a system of racial discrimination and still feels the effects of that system so acutely, the instance of Pretoria Girls High is incredibly worrying. The learners' demonstration was a courageous display of learner activism, but the fact that they had to resort to protest is a signal that their interests were not represented in the school's decision-making structures such as the SGB. Thus, the usefulness of government policies around democratic school governance and discrimination is impaired when learners are absent in decision-making processes.

The ill-conception of what constituted 'neat' hair was decided without the very learners who were deeply affected by the decision.<sup>351</sup> Rather, what is considered 'neat' should have been discussed with learners through democratic dialogue and negotiation.<sup>352</sup> The inclusion of learner perspectives would better account for racial and cultural diversity and pay heed to the national guidelines.<sup>353</sup>

Further, looking deeper into the specifics of a code of conduct, there are government guidelines on uniforms which ensure that the imposition of school uniforms does not infringe

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<sup>345</sup> As above.

<sup>346</sup> As above.

<sup>347</sup> As above.

<sup>348</sup> As above.

<sup>349</sup> As above.

<sup>350</sup> Committee on the Elimination of Racial Discrimination 'Concluding observations on the combined twenty-first to twenty-fourth periodic reports of Jamaica' (2022) CERD/C/JAM/CO/21-24 paras 13-14.

<sup>351</sup> Sujee (n 92) 90.

<sup>352</sup> As above.

<sup>353</sup> As above.

the constitutional rights of learners.<sup>354</sup> Ironically, the Guidelines' reference to gender is binary, having distinct provisions for only girls and boys, which completely ignores other learners on the gender spectrum.<sup>355</sup>

The Guidelines then address religious and cultural diversity, mandating that dress codes should account for this and accommodate learners when their 'religious beliefs are compromised by a uniform requirement.'<sup>356</sup> Specific reference is made to the use of headscarves and male learners requesting to wear a beard as part of a religious requirement.<sup>357</sup>

Although these Guidelines were published in 2006, in 2008 the Constitutional Court had to deal with an instance of learner discrimination in SGB policies, yet again. In *MEC for Education: KwaZulu-Natal and Others v Pillay*, a learner was punished for infringing the school's code of conduct by wearing a nose piercing, even though she wore it for religious and cultural reasons.<sup>358</sup> The Court held that this was unacceptable and that the school should have made an exemption for the learner to reasonably accommodate them considering that the wearing of the nose piercing was part of their religious and cultural practice.<sup>359</sup> Significantly, the Court highlighted the link between children's evolving capacities, child participation and discrimination holding that the more aging children take on more responsibility for their actions and beliefs, the more necessary it becomes to pay heed to their opinions on these matters.<sup>360</sup>

Once again, SGBs are found guilty of ignoring children's views and designing codes of conduct that are tone-deaf to the racial, cultural and religious diversity that may exist in the learner body. In response, clause 7 of the BELA Bill would potentially amend section 8 of SASA to allow for an exemption if the school's rules are in conflict with the religious and cultural beliefs of the learner concerned.<sup>361</sup>

However, handling conflicts arising on a case-by-case basis is not effective as it does not address the root of the problem. The issue in *Pillay* is fundamentally similar to the instance of Pretoria Girls High, as learners are reprimanded for not following rules that completely ignore

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<sup>354</sup> Sec 2 National Guidelines on School Uniforms GN 173 in GG 28538 of 2006.

<sup>355</sup> Sec 12 National Guidelines on School Uniforms (n 354); UN Report of the Independent Expert on sexual orientation and gender identity 'The law of inclusion' (2021) A/HRC/47/27 7.

<sup>356</sup> As above.

<sup>357</sup> As above.

<sup>358</sup> *MEC for Education, KwaZulu- Natal v Pillay* 2008 (1) SA 474 (CC).

<sup>359</sup> Sujee (n 92) 92.

<sup>360</sup> *Pillay* (n 358) para 56; Fokala (n 30) 191.

<sup>361</sup> Sujee (n 92) 96-97.

their contexts and lived realities.<sup>362</sup> These codes of conduct openly harbour rules that breed intolerance for religious, cultural and racial diversity. Under the guise of discipline, learners are punished for simply expressing essential parts of their identities. This is particularly cruel as it dehumanises learners, teaching them that instead of valuing their diversity, they will be disciplined for not conforming with school rules which completely neglect their interests. However, if when crafting these rules, these learners' interests had been represented and they were empowered to effectively and meaningfully participate in the design of these rules, this kind of dehumanisation, discrimination and undermining of constitutionally entrenched respect for diversity could have been avoided.

#### **4.3. Case studies on selected school policies position on learner participation and non-discrimination**

To better unpack the current landscape on school policy positions regarding non-discrimination and inclusion as well as learner participation, several case studies are conducted. One school has been chosen from each province. Thus, this investigation is in no way meant to be totally representative of all schools across each province. While these examples are not comprehensive, it does assist in painting a picture as to some of the practices carried out by public schools' SGBs.

Benoni High School (BHS) is a public co-educational secondary school in Gauteng.<sup>363</sup> The school appears to have an RCL structure of 34 learners from across all grades.<sup>364</sup> The 'Student Executive' as the school refers to it, seems to be responsible for enforcing discipline - other duties are not detailed.<sup>365</sup> Further, there is a bureaucratic chain of command in place for learner suggestions, complaints and requests.<sup>366</sup> Learners must report matters to their class representatives (which do not form part of the RCL).<sup>367</sup> The class captains then bring the matter to the attention of House Leaders who form part of the RCL.<sup>368</sup> These House Leaders then report to the House Captains who are also part of the RCL and must communicate the issue to the rest of the RCL.<sup>369</sup> The RCL raises the concern with the School Management Team, which unlike the SGB has no learner representation.<sup>370</sup> The School Management Team

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<sup>362</sup> Pillay (n 358).

<sup>363</sup> Benoni High School <https://www.bhs.co.za/> (accessed 1 October 2023).

<sup>364</sup> Benoni High School 'Student Executives' (2023).

<sup>365</sup> Benoni High School 'Prospectus' (2022) 21.

<sup>366</sup> As above.

<sup>367</sup> As above.

<sup>368</sup> As above.

<sup>369</sup> As above.

<sup>370</sup> As above.

will decide on the matter and the outcome must be communicated to the learner body via the RCL.<sup>371</sup>

Essentially, there is very little to no room for learner participation. Not only are learners' complaints stifled by an unnecessarily long chain of command, the body deciding on the matter does not allow for learner participation at all. The RCL seems to be in charge of merely communicating adult-decisions and enforcing discipline.<sup>372</sup>

The school does not detail any gender or race categories for learners in the RCL. Thus, the number of learners representing groups in these categories cannot be assumed. Furthermore, SGB representation is uncertain. Regardless, if the school is compliant with legislation, there ought to be a minimum of 2 and a maximum of 3 SGB representatives from the RCL.<sup>373</sup> It has previously been concluded that this small number does not allow for diverse representation and that learner governors are underrepresented in comparison to parents and educators on the SGB.

Analysing some of the school's policies can unveil what the lack of learner representation in policy-decision making results in. The School's Code of Conduct (BHS Code) houses the uniform and dress code policy which stipulates that all girls must wear dresses as part of the uniform.<sup>374</sup> However, an exception seems to be made for Muslim girls, allowing them to use pants.<sup>375</sup> Muslim boys are also acknowledged.<sup>376</sup> While generally, all boys must be clean-shaven, Muslim boys may maintain a neat, closely cropped beard if they have submitted a letter from a confirmed religious organisation stating that the learner does indeed adhere to Islamic faith and is maintaining the beard for that purpose.<sup>377</sup>

The exceptions made for Muslim learners occurs despite the School's religious policy that it follows a clear Christian vision and ethos.<sup>378</sup> It is assumed that because the school chooses to have a particular religious ethos, the school must be on private ground in order to be SASA compliant.<sup>379</sup> However, the school does elect to enrol children of different religious backgrounds in the 'spirit of tolerance and understanding.'<sup>380</sup> The BHS Code does not seem

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<sup>371</sup> As above.

<sup>372</sup> Phaswana (n 44) 106.

<sup>373</sup> Schedule E Gauteng SGB Regulations (n 261).

<sup>374</sup> BHS Prospectus (n 365) 6.

<sup>375</sup> As above.

<sup>376</sup> BHS Prospectus (n 365) 8.

<sup>377</sup> As above.

<sup>378</sup> BHS Prospectus (n 365) 19.

<sup>379</sup> Sec 57 SASA (n 11).

<sup>380</sup> BHS Prospectus (n 365) 19.

to be sensitive or responsive to other religious or cultural nuances such as nose piercings in Hinduism as detailed in *Pillay*.<sup>381</sup>

In fact, worryingly, this spirit of tolerance and understanding does not seem present in all parts of the dress code. Emphasis is placed on neat hairstyles for boys and girls and all girls' hair must be plaited, which on its own, is not problematic.<sup>382</sup> However, when read with other regulations, there does seem to be room for unfair discrimination. The plaited hair rule does not seem to cater for a diversity of hair types, thus there are more specific regulations around hair. Girls are not allowed to wear 'exaggerated – especially eccentric or extravagant or "cult" hairstyles (Mohican, Steps, Rastafarian, weaves, etc.).'<sup>383</sup> It is concerning that even Rastafarian hairstyles are described in an almost derogatory manner considering that the Constitutional Court has recognised the Rastafari religion as constitutionally protected.<sup>384</sup> Despite this disclaimer, the school seems to allow dreadlocks (for girls only) so long as they are neat.<sup>385</sup>

Other rules include that 'cornrows using hair pieces' must be no longer than 30 cm, 'bantu knots' are allowed without extensions, 'afro hair' must be neat and of a 'reasonable' size that is no longer than 10 cm, and braids must be 1 cm in width.<sup>386</sup> There is no justification from the school as to why these specified lengths are 'reasonable.'<sup>387</sup> Further, rules pertaining to length do not appear to apply uniformly. Students who have plaited hair do not seem to have to cap the length, unlike those with braids and afros.<sup>388</sup> For boys, no afros or dreadlocks are allowed at all.<sup>389</sup> Not unlike Pretoria Girls' High, these rules disproportionately affect learners of African descent who elect to use these styles, which signals a lack of tolerance for religious, racial and cultural diversity.<sup>390</sup> This position is furthered by the fact that there is no clause allowing for possible exceptions under the BHS Code.

Looking at another public co-educational dual-medium high school in Mpumalanga, Rob Ferreira High School (RFHS) seems to be compliant with legislation having two class representatives per class which make up a RCL of 58.<sup>391</sup> Once again, the gender and race of these learners cannot be assumed. There is then a separate learner council of 28 learners

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<sup>381</sup> *Pillay* (n 358).

<sup>382</sup> BHS Prospectus (n 365) 7-8.

<sup>383</sup> As above.

<sup>384</sup> *Prince v President of the Law Society of the Cape of Good Hope* 2002 (2) SA 794 (CC) para 15.

<sup>385</sup> BHS Prospectus (n 365) 7-8.

<sup>386</sup> As above.

<sup>387</sup> As above.

<sup>388</sup> As above.

<sup>389</sup> As above.

<sup>390</sup> CERD Concluding Observations Jamaica (n 350) paras 13-14.

<sup>391</sup> Rob Ferreira High School 'RCL' <http://www.robies.co.za/vlr.html> (accessed 1 October 2023).

which is explicitly divided into 14 girls and 14 boys as categorised by the school.<sup>392</sup> It is unclear about how the functions of the prefect council is different to that of RCL and under which legislation regulation of this body would fall. As far as SGB representation is concerned, the school lists 15 members of the SGB under specific categories such as marketing and finance, but there is no category for learner representation.<sup>393</sup> Nevertheless, should the school be compliant there should be 2 or 3 learners on the board, which does not cater for diversity and is low compared to the 15 adult members.

In this school, no dreadlocks or dread knots are allowed for boys and girls.<sup>394</sup> No jewellery is permissible and all boys must be clean shaven.<sup>395</sup> The rules apply generally without explicitly noting any exceptions on the basis of race, religion or culture. However, in the event of ambiguity, the school cedes power to the SGB to interpret the Code of Conduct, especially concerning 'extreme' hairstyles.<sup>396</sup> In light of this it is incredibly important that there be sufficient and diverse learner representation. Rather, than placing value on learner participation, the school seems to veer in the opposite direction. It is only parents that may apply to the principle for an exception should the code be in conflict with their religious convictions.<sup>397</sup> As if to minimise learner involvement even further, learners are bound by the code irrespective of whether they sign it or not.<sup>398</sup>

On the other end of the spectrum, there are some schools that make up for the lack of learner representation on SGBs by filling the gaps in legislation and providing opportunities for meaningful and effective participation. Rustenburg Girls' High School (RGHS) is one of these schools which is very open about its student structures and how much value is placed on learner representation and participation.<sup>399</sup> It is a public school in Western Cape which caters for girl learners only.<sup>400</sup> The school has many bodies of leadership beyond the RCL including Matric Leaders, Service and Society Committees, Sports Captains, Head of Music Groups and Ensembles and a Matric Committee.<sup>401</sup>

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<sup>392</sup> Rob Ferreira High School 'Student Council' <http://www.robbies.co.za/leerlingraad.html> (accessed 1 October 2023).

<sup>393</sup> Rob Ferreira High School 'Governing Body' <http://www.robbies.co.za/beheer-liggaam-governing-body.html> (accessed 1 October 2023).

<sup>394</sup> Rob Ferreira High School 'Code of Conduct' (2023) 19-20.

<sup>395</sup> As above.

<sup>396</sup> RFHS Code (n 394) 31.

<sup>397</sup> As above.

<sup>398</sup> As above.

<sup>399</sup> Rustenburg Girls' High School <https://www.rghs.org.za/> (accessed 1 October 2023).

<sup>400</sup> As above.

<sup>401</sup> Rustenburg Girls' High School 'Leadership' <https://www.rghs.org.za/leadership/> (accessed 1 October 2023).

The school seems to take pride in garnering leadership and details the specific roles for these structures. Notably, concerning RCL, the first recognised function is that the RCL ‘advises the governing body on matters relating to schooling or the interests of the learners.’<sup>402</sup> Further, more than just ensuring order and enforcing rules, the RCL is responsible for communication and maintaining healthy relationships between learners and the ‘wider school community.’<sup>403</sup>

The school is compliant with Western Cape’s lukewarm provisions on having 3 RCL per grade, but the school seems to be more progressive than the legislation, as it is alive to importance of learner involvement with representation of learner needs being paramount.<sup>404</sup> The Chair and Vice-Chair sit on the SGB and the school is very transparent about who these learners are.<sup>405</sup> Of course, the minimal amount of learners on the SGB is still a drawback, but the school’s progressive attitude toward promoting learner participation in other forms seems to go hand in hand with the development of inclusive policies.

The Code of Conduct succinctly focuses only on behaviour.<sup>406</sup> Although, the school has myriad specific policies pertaining to relevant issues in a more detailed fashion, which is highly welcomed. In terms of uniform and dress code, the school does not seem to prohibit any specific hairstyles and even accommodates Muslim girls who would like to use headscarves.<sup>407</sup> However, it is true that if the dress code is too simple, the gaps may create ambiguity and allow for discrimination when interpreted. Thankfully, the school safeguards against this with a specific anti-discrimination policy.<sup>408</sup> Significantly, all members of the school community are bound and the school holds the best interest of the child as central when interpreting this policy.<sup>409</sup> The policy is commendable and progressive allowing learners to lay a complaint ‘using the channel with which they are most comfortable.’<sup>410</sup> Moreover, while the race of RCL and learner governors cannot be assumed, the anti-discrimination policy is an indication that the school respects and values racial diversity.

Further, the school’s language policy acknowledges that the school must be responsive to the change of language in the community, available resources, preserving mother-tongue languages and promoting multilingualism as well as a ‘commitment to redress, inclusivity and

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402 As above.

403 As above.

404 Sec 2(1) Western Cape RCL Guidelines (n 275).

405 Rustenburg Girls’ High School ‘School Governing Body’ <https://www.rghs.org.za/sqb-information/> (accessed 1 October 2023).

406 Rustenburg Girls’ High School ‘Code of Conduct’ (2023).

407 Rustenburg Girls’ High School ‘Uniform Regulations’ (2023).

408 Rustenburg Girls’ High School ‘Anti-discrimination and Bullying Policy’ (2023).

409 As above.

410 As above.

non-discriminatory practices regarding race and language.<sup>411</sup> The school goes beyond only regulating language use as a medium of instruction.<sup>412</sup> While it notes that English is the primary mode of communication, this should not form a barrier for persons whose first-language is not English.<sup>413</sup> Moreover, bolstering the anti-discrimination policy, there is zero-tolerance for unfair discrimination on the basis of language.<sup>414</sup> This is a far cry compared to schools such as Pretoria Girls' High where learners were berated for speaking isiXhosa at their school.<sup>415</sup>

As far as religion is concerned, the school values religious diversity, honouring this and also not allowing for the denigration of any religion or a secular world-view.<sup>416</sup> The policy strives to promote 'unity without uniformity and diversity without divisiveness.'<sup>417</sup>

Where the school's rules are in conflict with a learner's religion or culture, that learner as well as their parent must submit a letter to the SGB detailing the rule in question, the manner in which the learner wishes to depart from the rules, proof of belonging to that specific culture or region and whether the practice is mandatory or compulsory.<sup>418</sup> Allowing space for participation beyond the learner representatives on the SGB, the school calls on the specific learner and their parent/s to directly engage with the SGB in an interview once the letter is submitted.<sup>419</sup>

Moving to Maritzburg College which is a public boys school in KZN, the school has a prefect system of 27 learners which are democratically elected by the entire learner body and the staff.<sup>420</sup> Unfortunately, it seems as if only grade 11 learners may apply to be part of this leadership body.<sup>421</sup> This does not only mean a lack of representation of learners from other grades, it signals a potential contravention of provincial legislation.<sup>422</sup> Outside of this, the school does seem to acknowledge the RCL's role in 'giving the boys a voice on the governing body' and has 3 learner governors on the body which presumes that the school has more than 650 learners.<sup>423</sup> Once again, no matter the racial composition of the RCL, this amount is insufficient regarding representation.

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<sup>411</sup> Rustenburg Girls' High School 'Language Policy' (2023) 1-2.

<sup>412</sup> As above.

<sup>413</sup> As above.

<sup>414</sup> As above.

<sup>415</sup> Sujee (n 92) 90.

<sup>416</sup> Rustenburg Girls' High School 'Religion Policy' (2023) 1-5.

<sup>417</sup> As above.

<sup>418</sup> Rustenburg Girls' High School 'School Rules and Procedures Policy' (2023) 14-15.

<sup>419</sup> As above.

<sup>420</sup> Maritzburg College 'Leadership' <https://maritzburgcollege.co.za/leadership/> (accessed 1 October 2023).

<sup>421</sup> As above.

<sup>422</sup> Sec 5 KZN RCL Guidelines (n 279).

<sup>423</sup> Sec 3(5) KZN SGB Regulations (n 266); Maritzburg College 'Governing Body' <https://maritzburgcollege.co.za/college-board-governing-body/> (accessed 1 October 2023).



Unremarkably, the most controversial aspect of the school's Code of Conduct (Maritzburg Code) is hair. Despite the Maritzburg Code mandating that it be interpreted in light of the Constitution and SASA, among other laws, the Code specifically prevents boys from wearing dreadlocks and cornrows without any justification as to why.<sup>424</sup> Ironically, the Maritzburg Code then has a specific section for Muslim boys providing that 'as a constitutional democracy, South Africa affords scholars the constitutional right to follow certain protected and accepted religious beliefs/traditions.'<sup>425</sup> In light of this Muslim boys may apply to maintain a beard starting from grade 10 onwards.<sup>426</sup> Once approved, the student must maintain the beard on a daily basis for the rest of their school career.<sup>427</sup> Regrettably, the Maritzburg Code does not detail whether learners may apply for an exception to these rules.

While the level of learner participation in the drafting of the Maritzburg Code is unclear and the content of the Code bears some disappointing provisions, this school is a good example of how learners can participate beyond the SGB. In 2019 the school established an anti-discrimination policy drafted by the school's Social Awareness Task Team (SATT) which consisted of 13 members.<sup>428</sup> Significantly, 5 members of the SATT were learners.<sup>429</sup> The policy begins by emphasising that the school is committed to fostering a space where learners are comfortable voicing their opinions and that learners played a leading role in the crafting of the policy.<sup>430</sup> The policy seems to embrace diversity and inclusion and tackle multiple forms of unfair discrimination while also empowering learners to take action through the route they are most comfortable with.<sup>431</sup> It is hoped that the existence of a policy of this nature, where student views were accounted for, could be used to curtail the drawbacks of the Code.

#### 4.4. Conclusion

It has previously found that, because of a lack of inclusion of learners, the denial of school politics and diverse and competing interests, SGBs were not empowering school communities or 'stimulating substantial organisational changes.'<sup>432</sup> Again, while not comprehensive, this analysis of government and school policies seem to concur with this position. While

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<sup>424</sup> Maritzburg College 'Code of Conduct' (2022) Annexure B 21-23.

<sup>425</sup> As above.

<sup>426</sup> As above.

<sup>427</sup> As above.

<sup>428</sup> Maritzburg College 'Anti-discrimination Policy' (2019).

<sup>429</sup> As above.

<sup>430</sup> As above.

<sup>431</sup> As above.

<sup>432</sup> Lewis & Naidoo (n 25) 104-108.

government guides exist, these are not sufficient to protect against non-discrimination in school policies. However, inclusive learner participation seems to ease this problem.

Schools such as RGHS which had robust structures for learner participation generally and were transparent about learner representation on the SGB, tended to have the most progressive policy position. Further, while the Maritzburg Code harboured drawbacks, the anti-discrimination policy which allowed for a commendable amount of student participation, was also progressive. In order for these best practices to be the rule rather than the exception, legislation ought to ensure that more schools operate like that of RGHS to secure learner participation and non-discrimination which in turn would cultivate inclusive school policies.

## CHAPTER 5

### CONCLUSION AND RECOMMENDATIONS

#### 5.1. Conclusion

Although, it is undoubtedly a complex process and outcome to achieve, this research has highlighted the importance of child participation in South African schools' policy-making. Research has revealed that democratic school governance is tool for learner participation as it values learners as key stakeholders in school policy-making decisions.<sup>433</sup> The inclusion of learners disrupts authoritarianism, as instead of having school rules be non-negotiable, students would have a say in these school policies which affect them.<sup>434</sup> Moreover, inclusion and non-discrimination in learner participation is essential as learner's intersecting vulnerabilities affect the quality of their participation.<sup>435</sup> Further, despite adult qualms about child participation, learners participating in school policy-making is in children's best interest.<sup>436</sup>

These principles then form the backdrop for models on child participation, as together they dictate safeguards that must be put in place to ensure genuine participation.<sup>437</sup> The result is the creation of a robust matrix which cultivates meaningful and effective participation which satisfies the right at hand.<sup>438</sup> Unfortunately, South Africa's legislation does not seem to measure up against this. The formal aspects of learner representation regarding the number, age, term limit and diversity of learner governors on the SGBs, falls short as learners are underrepresented and overpowered by adult governors. The substantive aspects of learner participation are almost completely lacking as the law does not address the nuances regarding child capacities and negative perceptions around child capacities nor does it put safeguards in place that ensure effective and meaningful participation.

Government policies seem ineffective in preventing school policies from harbouring discriminatory practices. Ensuring that there is diverse and inclusive representation on SGBs in the first place is a more intentional and proactive approach to ensuring that learners' interests are expressed and catered for. Therefore, the gaps in the legal framework must be

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<sup>433</sup> Lansdown (n 113) 9.

<sup>434</sup> Davids (n 9) 10.

<sup>435</sup> Cuevas-Parra (n 127) 369.

<sup>436</sup> Reyneke (n 18) 211.

<sup>437</sup> African Children's Committee Guidelines on Child Participation (n 38) 15-20.

<sup>438</sup> As above.

filled so that learners can better enforce their right to participate. Moreover, stronger provisions on learner participation is needed so that schools do not merely allow for learner representation on SGBs as a tick-box exercise.<sup>439</sup> Rather, all schools must uniformly realise, protect, promote (and even celebrate) the effective and meaningful participation of learners in school policy-making decisions.

## 5.2. Recommendations

Several challenges for effective and meaningful learner participation in policy decision-making have emerged through analysis of the human rights framework, legislation, school governance structures and their policies. The following recommendations are formulated in order to comprehensively tackle these challenges by imbuing learner participation with the principles of democratic school governance, the best interests of the child and non-discrimination.<sup>440</sup> Further, in light of child participation models discussed, the recommendations should materialise adult-initiated, shared decisions with children and child-initiated, shared decisions with adults, while also ensuring that the aspects of voice, space, influence and audience are realised in an equitable manner for learners who endure intersecting vulnerabilities.<sup>441</sup>

Notably, there is a lack of aids for monitoring and evaluating child participation. Thus, each recommendation is accompanied by outcomes and indicators which help to better identify goals and to objectively measure whether these results are achieved.<sup>442</sup>

Considering that participation is both a process and an outcome, it is best to divide the recommendations into three stages: first, preparation for the engagement of stakeholders; second, the meeting of stakeholders; finally, reviewing the stakeholder's decision and the process of engagement.<sup>443</sup> The stages are cyclical in nature - if the review process at the end is diligently conducted, it should improve the preparation and meeting stages in the next engagement.<sup>444</sup>

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<sup>439</sup> R Hart 'Stepping Back from 'The Ladder': Reflections on a Model of Participatory Work with Children' in A Reid (n 178) 20.

<sup>440</sup> African Children's Committee Guidelines on Child Participation (n 38) 15-20.

<sup>441</sup> Cuevas-Parra (n 127) 369.

<sup>442</sup> Lansdown & O'Kane (n 172) 7-10.

<sup>443</sup> Thomas (n 124) 199-200.

<sup>444</sup> T Joiner (n 171) 20.

## **5.2.1. Stage one: Preparation for the engagement of stakeholders**

### **5.2.1.1. Stronger legislation mandating SGBs to tangibly ensure formal learner representation**

First, there must be a substantial number of learner governors on the board. Ascertaining a specific number of learners is difficult as the size of an SGB can vary depending on the size of the school. Rather, a possible percentage of learner governors could be determined. For example, the composition of Maritzburg College's SATT can be looked to as a guide where 40% of the team consisted of learner representatives.<sup>445</sup> This ensures that adult governors are still in the majority but do not hold overbearing power over learners. The outcome would be an increased number of learner representatives, with an indicator being that learners have more influence over decisions.

Second, there must be learner presence when voting in order for there to be a quorum.<sup>446</sup> Similar to the manner in which Gauteng ensures parent governor presence for voting,<sup>447</sup> quorum should mean 50% of the enfranchised members plus one learner in order to ensure learner presence. The outcome would be that decisions are never taken while learners are absent and the indicator would be that learners' influence over all decisions are visible and not undermined.

Third, learner governors must be representative of the overall learner body, but especially of those learners who are marginalised.<sup>448</sup> Notably, a larger number of learners means more scope for diverse representation of the learner body's demographic. In this regard, SGBs should be mandated to make sure that learners of different ages, races, genders, sexual orientations, religions, cultures, amongst others, are represented on the board in accordance with the school's demographics.<sup>449</sup> Where an ordinary public school caters for learners with special needs, those learners should be represented within the SGB. The outcome would be diverse representation, with the indicator being that a views from different learner backgrounds are shared.<sup>450</sup>

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<sup>445</sup> Maritzburg College (n 424).

<sup>446</sup> O'Kane (n 128) 28.

<sup>447</sup> Sec 39(2) Gauteng SGB Regulations (n 261).

<sup>448</sup> O'Kane (n 128) 28.

<sup>449</sup> O'Kane (n 128) 15.

<sup>450</sup> Thomas (n 124) 216.

### 5.2.1.2. Training and capacity building facilitated by the Department of Education nationally.<sup>451</sup>

Training should be endorsed nationally in order to ensure a uniform approach. Further, the training should take on three endeavours. First, one of the biggest barriers to learner participation is adult governors' perceptions and negative attitudes regarding learner involvement.<sup>452</sup> Training and capacity building can help alleviate these tensions.<sup>453</sup> The importance of learner participation and dispelling of myths around child capacities can be achieved through mandatory education and training.<sup>454</sup> Through this, adult governors can begin to understand that learners are the actors most deeply affected by SGB decisions and should therefore be appreciated as key stakeholders in the decision-making process.<sup>455</sup> Further, adult governors will come to see that learners' capacities vary and constantly evolve, and in light of this they must balance protecting learners from the consequences of their decisions on one hand while ensuring that their opinions are considered and influence outcomes on the other hand.<sup>456</sup>

The outcome should be that adult governors' attitudes change toward valuing learner participation and view it as a decision-making asset.<sup>457</sup> Possible indicators could be where adult governors are seen to be taking learners' views seriously, ensuring that learners have access to relevant information so that they too can make well-informed contributions, and where adult governors are not manipulating learners but rather encouraging learners to genuinely participate.<sup>458</sup>

Second, training and capacity building must also empower learners (especially those who are marginalised) to articulate their views, value their own contributions and see themselves as key stakeholders in the school's decisions.<sup>459</sup> Learners should be encouraged to take genuine interest in the drafting of school policies, should take ownership of their contributions to those policies and be drivers of change.<sup>460</sup> The result should be a more active learner body and

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<sup>451</sup> Save the Children (n 146) 31.

<sup>452</sup> As above.

<sup>453</sup> As above.

<sup>454</sup> As above.

<sup>455</sup> Inter-Agency Working Group on Children's Participation (n 107) 5.

<sup>456</sup> Save the Children (n 146) 9.

<sup>457</sup> G Lansdown & C O'Kane (Save the Children) 'A Toolkit for Monitoring and Evaluating Children's Participation Booklet 3: How to measure the scope, quality and outcomes of children's participation' (2014) 28.

<sup>458</sup> Shay & Yu (n 69) 8.

<sup>459</sup> de Wijn (n 168) 20-21.

<sup>460</sup> As above.

learner governors. An indicator could be seeing learner governors engaging more robustly and enthusiastically on SGB matters.

The final task of training and capacity building is to ensure that all governors engage in democratic and inclusive school governance. All stakeholders must be able to engage with others in a transparent, fair, just, and mutually respectful manner while carrying out democratic discussions and negotiations.<sup>461</sup> Further, governors must be able to appreciate the nuances that come with inclusive and diverse representation and should be sensitised to not only prevent unfair discrimination but to bolster marginalised learners' participation.<sup>462</sup> Governors must become familiar with all government policies preventing discrimination and promoting diversity in relation to codes of conduct as well as policies on language, uniforms, religion, and others that may cause unfair discrimination.

Outcomes include that all decisions are taken only after thorough deliberation; that a range of opinions (especially those of marginalised learners) are engaged with; and that the policy decisions reflect sensitivity toward diversity and are inclusive.<sup>463</sup> Indicators of this are that every stakeholder has shared their own views and has interacted with others' views, that marginalised learners have shared their views and that these views have impacted policy decisions to the extent that these decisions do not bring about unfair discrimination.

### **5.2.1.3. Mandating provision for adequate preparation and engagement with the general learner body**

With some schools having more than 650 learners (as indicated by provincial legislation), it is important that the learner governors interact with the learner body before SGB meetings so that they can truly be representative of the larger learner body. In order to be best prepared, learner governors must be fully informed about the matters at hand to be able to inform other learners about the agenda items and engage with them.<sup>464</sup> Engagement could happen through mass forums, referendums, surveys, or other methods chosen by the learners, depending on what the learners deem meaningful and effective to them.<sup>465</sup> The outcome of this is that a range of the learner body's views are communicated in SGB meetings with an indicator being that all learners of the school feel as if their views are considered by the school's decision-makers.

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<sup>461</sup> Lewis & Naidoo (n 25) 102.

<sup>462</sup> O'Kane (n 128) 34.

<sup>463</sup> Lansdown (n 457) 3.

<sup>464</sup> Inter-Agency Working Group on Children's Participation (n 107) 6.

<sup>465</sup> As above.

## **5.2.2. Stage two: Meeting and engagement of stakeholders.**

### **5.2.2.1. Learners must be informed of the exact level of their participation and the purpose of their participation in this regard.<sup>466</sup>**

For example, if the matter concerns third-party contracts, learners must be told that due to SASA they will not be able to vote on the matter nor will they be liable for the outcome.<sup>467</sup> However, adult governors must inform learners that they are still able to participate in the matter by expressing their opinions and that their views will be considered. The outcome is that all stakeholders' expectations are managed, that as a bare minimum learner governors inputs are always regarded and that feedback is given to learners as to how their views have shaped the decisions.<sup>468</sup> Indicators that this has been executed is that all stakeholders are satisfied with their role on the board and know the purpose of the engagement, that learners were actually able to express their views, and that learners feel as if they have genuinely contributed because they understand how they shaped the decision or why their views are not reflected in the decision.<sup>469</sup>

### **5.2.2.2. Engagement must be child-friendly.<sup>470</sup>**

In order to ensure that children are able to fully express their views and genuinely interact with adult governors, the spaces in which they participate must be comfortable and safe.<sup>471</sup> Possible outcomes are that child-friendly language is used instead of language that is overly technical and complicated.<sup>472</sup> The set up of the room should not be intimidating by, for example, placing all learner governors at the corner of the room while adult governors dominate the discussion table.<sup>473</sup> Indicators are that the learner governors are able to understand and be well-informed about all circumstances around the decision; that they are comfortable to express their opinion without fear of undue criticism and the confidence that they have the attention of adult governors; and that learner governors do not feel out of place or excluded in SGB meetings.

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<sup>466</sup> O'Kane (n 128) 9; Lansdown (n 113) 11.

<sup>467</sup> Sec 32 SASA (n 11).

<sup>468</sup> Hunt (n 17) 5.

<sup>469</sup> CRC General Comment 12 (n 1) paras 45-47.

<sup>470</sup> O'Kane (n 128) 9.

<sup>471</sup> As above.

<sup>472</sup> O'Kane (n 128) 57.

<sup>473</sup> Lansdown (n 113) 14.



### 5.2.3. Stage three: Review

#### 5.2.3.1. There must be a review of the process and decision by the learners.<sup>474</sup>

There must be space for learners to look at the process of their participation in its entirety and assess whether they are satisfied.<sup>475</sup> Further, learners must be given the opportunity to analyse whether their contributions are reflected in SGB decisions.<sup>476</sup> The outcome would be that the process remains open, adaptive to change and responsive to learner needs.<sup>477</sup> SGBs decisions should not be too rigid and should also be flexible where learners' views were not considered.<sup>478</sup> Indicators of this would be that learners regularly provide feedback to adult governors and detail their complaints and suggestions pertaining to the process of their participation as well as the SGBs decisions.<sup>479</sup>

#### 5.2.3.2. Creation and maintenance of accountability mechanisms.<sup>480</sup>

The SGB (including learner governors) must be able to show that learner representation is diverse, and how exactly learners have participated in policy decision-making. Moreover, the SGB must be alive to complaints by learners where participation has not been satisfactory (for example, because a learner felt manipulated by an adult governor) and the issue must be addressed in a manner that actually addresses the learners' grievances.<sup>481</sup> The outcome is that all governors become responsible for making sure that meaningful and effective learner participation is carried out. Possible indicators are that the school transparently displays the composition of the SGB to the school community, that the SGB publishes regular reports after meetings detailing learner participation, and that there are structures in place to address complaints.<sup>482</sup>

#### 5.2.3.3. Systems for continuity must be in place.

Continuity ensures that learner participation is sustainable.<sup>483</sup> On one hand there is a power imbalance as adult-governors seem to leverage that they are more experienced than learner governors because they have longer terms.<sup>484</sup> Yet, on the other hand, it is difficult for learner governors to hold a term longer than a year given that the learner body is ever dynamic. Thus,

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<sup>474</sup> Save the Children (n 146) 31 and 40.

<sup>475</sup> N Auriat *et al* 'Overview – identifying best practices in children's participation' (2001) 42 *PLA Notes* 3.

<sup>476</sup> O'Kane (n 128) 25.

<sup>477</sup> Lansdown (n 113) 9.

<sup>478</sup> As above.

<sup>479</sup> G Lansdown & C O'Kane (Save the Children) 'A Toolkit for Monitoring and Evaluating Children's Participation Booklet 2: measuring the creation of a participatory and respectful environment for children' (2014) 3.

<sup>480</sup> O'Kane (n 128) 25.

<sup>481</sup> CRC General Comment 12 (n 1) paras 45-47.

<sup>482</sup> O'Kane (n 128) 27.

<sup>483</sup> Lansdown (n 113) 17.

<sup>484</sup> Hunt (n 17) 5.

the SGB must ensure that there is an adequate hand-over from one set of learner governors to the next.<sup>485</sup> The outcome is that learner governors are able to seamlessly integrate into the SGB and be familiar with its processes. Indicators are that current learner governors are training the next elected representatives or potential representatives through a shadowing programme.

**Word count:** 20 340

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<sup>485</sup> R Hart 'Stepping Back from 'The Ladder': Reflections on a Model of Participatory Work with Children' in A Reid (n 178) 20.

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